

No. 12506

United States
Court of Appeals
for the Ninth Circuit.

WESTERN PACIFIC RAILROAD CORPORATION and ALEXIS I.
duP. BAYARD, Receiver,

Appellants,

vs.

WESTERN PACIFIC RAILROAD COMPANY, SACRAMENTO
NORTHERN RAILWAY, TIDEWATER SOUTHERN RAILWAY,
DEEP CREEK RAILROAD COMPANY, THE WESTERN REALTY
COMPANY, THE STANDARD REALTY AND DEVELOPMENT
COMPANY and DELTA FINANCE CO., LTD.,

Appellees.

MEREDITH H. METZGER, HENRY OFFERMAN and J. S. FARLEE
& CO., INC.,

Appellants,

vs.

WESTERN PACIFIC RAILROAD COMPANY, SACRAMENTO
NORTHERN RAILWAY, TIDEWATER SOUTHERN RAILWAY,
DEEP CREEK RAILROAD COMPANY, THE WESTERN
REALTY COMPANY, THE STANDARD REALTY AND DE-
VELOPMENT COMPANY and DELTA FINANCE CO., LTD.,

Appellees.

Transcript of Record
In Five Volumes

Volume V
(Pages 1797 to 2176)

Appeals from the United States District Court,
Northern District of California,
Southern Division.

JUL 24 1950



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Appeals from the United States District Court,
Northern District of California,
Southern Division.

PLAINTIFF'S EXHIBIT No. 70

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York 5, N. Y.

May 6, 1947.

Mr. M. J. Curry,
40 Wall Street,
Room 5205,
New York, N. Y.

Dear Mr. Curry:

This acknowledges your letter of May 5th as to the pending tax matters for the years 1942, 1943 and 1944, The Western Pacific group, in which I act as tax counsel. Obviously, as your letter suggests, the only thing that I could do in connection with a possible stipulation between the various interested companies in connection with pending litigation between them as to allocation, would be to "use my good offices". The use of my good offices would necessarily be limited to calling to the attention of the other members of the group the fact which I have impressed upon your group; namely, that there is a common interest in concluding promptly the proposed settlement which I have been negotiating with the Treasury Department. It would in my judgment be disastrous if controversies between the members of the group, which could properly await subsequent disposition, should make impossible a settlement along the lines heretofore outlined to your group.

As you know, the legal representation of the rail-

road company in this matter is entirely in the hands of Mr. Allan P. Matthew of the firm of McCutchen, Thomas, Matthew, Griffiths & Greene of San Francisco. I understand that Mr. Matthew is represented here in New York in connection with the New York proceedings by Mr. Crouch of the firm of Clark, Carr and Ellis. My function is definitely limited to the dealings with the Treasury Department in connection with the tax controversy where certainly all members of the group have a common interest. I have sent a copy of your letter to me and a copy of this letter to Mr. Allan P. Matthew.

Naturally, I am at the disposition of you and your associates and of any other member of the corporate group as to the method of computing the settlement or any other information which will be helpful in ironing out such differences as may exist between members of the corporate group. In closing, however, let me emphasize again the vital element that this controversy between the members of the corporate group shall not be allowed to interfere with an advantageous settlement with the Treasury Department, as to which there is clearly no conflict in interest.

Sincerely yours,

JAMES K. POLK.

Copies to: Mr. Nicodemus
 Mr. A. P. Osborn
 Mr. Willis D. Wood

[Endorsed]: Filed Feb. 3, 1949.

PLAINTIFF'S EXHIBIT No. 71

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York 5, N. Y.

May 19, 1947.

Mr. C. R. Krigbaum,
Internal Revenue Agent in Charge,
225 Broadway,
New York, N. Y.

The Western Pacific Railroad Corporation
and Affiliated Corporations

1942, 1943 and 1944 Federal Income Taxes.

Dear Sir:

Reference is made to the conference held in your office May 6th with regard to the tax liabilities of The Western Pacific Railroad Corporation and its affiliated companies for the taxable years 1942, 1943 and 1944.

At this conference an agreed basis of settlement of the tax liabilities involved was reached and this letter contains the written undertaking of the taxpayers effectuating the settlement.

The taxpayer on behalf of itself and its affiliated subsidiaries agrees to settle and determine the tax liabilities of said corporation for the taxable years 1942, 1943 and 1944 in the amounts shown on the returns as filed. This proposal of settlement accordingly relates to the consolidated returns filed for the calendar years 1942 and 1943 and 1944, in which said return for 1944 The Western Pacific Railroad Corporation included therein its subsidiaries for the

period January 1, 1944 to April 30, 1944, during which period affiliation existed. This settlement does not relate to or affect the tax liability of the subsidiaries from and after April 30, 1944 when their affiliated status with The Western Pacific Railroad Corporation was terminated.

As part of the settlement The Western Pacific Railroad Corporation consents to the rejection of the pending claim for refund of 1942 taxes and further agrees not to sue upon said claim or file other or further claims in respect of 1942 taxes on any ground whatsoever. It is also stipulated that The Western Pacific Railroad Corporation on behalf of itself and its affiliated subsidiaries will, if this settlement is accepted, execute or procure the execution of any other or further agreements or assurances requested by the Commissioner of Internal Revenue for the purpose of effectuating the settlement.

The settlement reached with your office is agreed to without prejudice, however, to any rights or claims of the parties in the event the settlement is not accepted by the Commissioner of Internal Revenue.

Authority for settlement of the tax liabilities of the above named taxpayers by the undersigned is contained in power of attorney heretofore filed with your office.

Respectfully,

THE WESTERN PACIFIC
RAILROAD CORPORATION,

JAMES K. POLK,

Attorney-in-Fact.

[Endorsed]: Filed Feb. 3, 1949.

PLAINTIFF'S EXHIBIT No. 72

The Western Pacific Railroad Company
Western Pacific Building,
526 Mission Street,
San Francisco 5, California.

February 11, 1947.

Via Air Mail

073

James K. Polk, Esq.,
c/o Carlton Hotel,
Washington, D. C.

Dear Mr. Polk:

In order that you may have definite authorization from this Company to proceed in connection with the pending controversy as to Federal income taxes for the years 1942, 1943 and 1944, as to which you hold power of attorney, I have today conferred with all available directors. All of the directors I have been able to reach, constituting a majority of the directors, have concurred in the proposal that you submit in writing to the Commissioner of Internal Revenue a definite proposal that the three years 1942, 1943 and 1944 be settled on the basis of no refund and no additional tax.

We understand that the year 1944 is involved in this controversy, so far as this Company is concerned, only during the period of affiliation, that is, through April 30, 1944, and that for the balance of the year 1944 the taxes of this Company will be determined on the basis of its separate return for that period outside the affiliation.

This authorization will be formally ratified at a meeting of the Board of Directors to be held early in March, 1947.

Very truly yours,

/s/ CHARLES ELSEY.

Copy by regular mail.

Draft—2/25/4. .—JKP:EMD

The Western Pacific Railroad Company

March , 1947.

Resolution of Board of Directors

The President submitted to the Board a copy of a letter which was submitted by James K. Polk, Tax Counsel for the Company, to the Commissioner of Internal Revenue relative to the settlement of Federal Income Tax liabilities for the years 1942, 1943 and so far as this Company and its affiliates are concerned, the first four months of 1944. He stated that prior to the submission of that letter, the matter had been taken up with the members of the Board individually and the approval and authorization of a majority of the Board to the submission of that letter had been obtained. He stated that following such submission to the individual members of the Board, he had instructed Mr. Polk in writing to make such offer. A copy of the President's letter was presented to the meeting. After consideration and on motion duly made and seconded, it was

Resolved, that the submission of the afore-

said letters, copies of which were presented at this meeting, be and the same are in all respects ratified, affirmed and approved.

“The Chairman submitted to the Board a copy of a letter which was submitted by James K. Polk, Tax Counsel for the Company, to the Commissioner of Internal Revenue relative to the settlement of Federal Income Tax liabilities for the years 1942, 1943 and so far as this Company and its affiliates are concerned, the first four months of 1944. He stated that prior to the submission of that letter, the matter had been taken up with the members of the Board individually and the approval and authorization of a majority of the Board to the submission of that letter had been obtained. He stated that following such submission to the individual members of the Board, he had instructed Mr. Polk in writing to make such offer. A copy of the President’s letter was presented to the meeting. After consideration and on motion duly made and seconded, it was

Resolved, that the submission of the aforesaid letters, copies of which were presented at this meeting, be and the same are in all respects ratified, affirmed and approved.”

I, C. L. Droit, Secretary of The Western Pacific Railroad Company, a corporation, as such Secretary do hereby Certify that the foregoing is an Extract from the minutes of proceedings of a regular meeting of the Board of Directors of said corporation, duly and regularly convened and held at the office

of said corporation on the 4th day of March, 1947, at which a quorum of said Board was present; that the motion and resolution set forth in said Extract were duly adopted by said Board at said meeting and have not been rescinded or amended and remain in full force and effect.

In Witness Whereof, I have hereunto signed my name as such Secretary and affixed the seal of said corporation this 28th day of March, 1947.

[Seal] /s/ C. L. DROIT,
Secretary,

THE WESTERN PACIFIC
RAILROAD COMPANY.

[Endorsed]: Filed Feb. 3, 1949.

PLAINTIFF'S EXHIBIT No. 73

The Western Pacific R.R. Corp. and Affiliates
Summary of Comparative Tax Computations

Year	Return As Filed	Stock Loss Eliminated	Stock Loss Eliminated & Invested Capital Reduced \$25,000,000
1943.....	\$8,566,200	\$9,837,900—
1944.....	1,127,900	1,127,900—

The Western Pacific R.R. Company—8 Mos.—1944 Return
Tax Paid Is \$185,000 Below 80% Maximum

Reduction of Invested Capital Base of Approximately \$4,000,000
Would Produce the 80% Condition.

1943

The W.P.R.R. Corp. and Affiliates

Recomputation of Consolidated Income and Excess Profits Tax
Liability on Basis of the Elimination of Sec. 23(g) Stock Loss

Item No.

1.	Consol. Adjusted Net Income per Return as filed	\$55,093,108.70
2.	Add Stock Loss Deduction	73,116,400.00
3.	Adj. Net Income (before Stock Loss)	18,023,291.30
4.	Add 50% of Int. on Borrowed Capital	1,594,966.23
5.	Dividends Rec'd	108.00
6.	Consol. Excess Profits Net Income	19,618,149.53
7.	Deduct Excess Prof- its Credit	\$8,573,153.33
	Specific Exemption....	5,000.00
8.	Unused Credit (1941)	8,474,200.00
9.	Adjusted Excess Profits Net Income	2,565,796.20
10.	Consol. Excess Profits Tax @ 81% (Net).....	\$2,078,300—
11.	Consol. Normal-Tax Net Income (3-9)	\$15,447,495.10
12.	Consol. Normal-Tax @ 42%	6,487,900—
	Consol. Total Tax Liability	<u>\$8,566,200</u>

Note:

80% Max. not applicable.

.80 × \$18,023,291.30 = \$14,400,000.

1943

The W.P.R.R. Corp. and Affiliates

Recomputation of Consol. Income and Excess Profits Tax Liability on
Basis of Elimination of Stock Loss and Reduction of
Invested Cap. Base—\$25,000,000

Item No.

1.	Con. Adj. Net Income (before Stock Loss)	\$18,023,291.30
2.	Con. E. P. Net Income	19,618,149.53
3.	Deduct:	
	E. P. Credit	\$7,073,153.33
	Specific Ex.	5,000.00
4.	Unused Credit	6,724,200.00 13,802,353.33
5.	Con. Adj. E. P. Net Income	5,815,796.20
6.	Con. E. P. Tax @ 81% (Net)	\$4,710,800—
7.	Con. Normal-Tax Net Income (1-5)	12,207,495.10
8.	Con. Normal-Tax @ 42%	5,127,100—
	Consol. Total Tax Liability	<u>9,837,900</u>

Note: The increase in tax liability over the computation on Sheet 1 reflects a total reduction of Inv. Cap. of \$50,000,000—the carryover and the current year

$$\begin{array}{r}
 \text{1941 Carryover} \qquad \qquad \text{Current} \\
 [(7\% \times 25,000,000) + (6\% \times 25,000,000)] \times \\
 \text{Tax Rate} \\
 \text{Differential} \\
 [81\% - 42\%] = \$1,271,700.
 \end{array}$$

1944

The W.P.R.R. Corp—12 Mos.

Affiliates—4 Mos.

Recomputation on Basis of Elimination of Net Operating Loss
Attributable to 1943 Stock Loss

Item No.

1.	Consol. Adj. Net Income per Return as filed	\$42,403,256.08
2.	Add: Net Oper. Loss Deduction....	<u>45,088,695.18</u>

3.	Consol. Adj. Net Income (before N. Oper. Loss)	2,685,439.10
4.	Add 50% of Int. on Borrowed Cap.	526,244.29
5.	Dividends Rec'd	116.00
6.	Consol. E. P. Net Income	3,211,567.39
7.	Deduct: E. P. Credit	\$5,710,848.31
	Spec. Exemption	5,000.00
8.	Unused Credit	5,715,848.31
9.	Consol. Adj. E. P. Net Income.....	.....
10.	Consol. E. P. Tax .....	.....
11.	Consol. Normal-Tax Net Income (Item 3)	2,685,439.10
	Consol. Normal-Tax @ 42%	1,127,900—
	Consol. Total Tax Liability	1,127,900—

1944

The W.P.R.R. Corp.—12 Mos.

Affiliates—4 Mos.

Recomputation on Basis of Elimination of Net Operating Loss and
Reduction of Invested Capital Base in Amount of \$25,000,000
Excess Profits Credit is then reduced to \$4,960,000. Which is still
sufficient to insulate against E. P. Liability and the total tax remains
unchanged from computation on Sheet 3.

1944

The W.P.R.R. Company

8 Mos.—May 1 to Dec. 31, 1944

Surtax Net Income	\$8,866,205—	80%
Maximum Tax Payable	\$7,092,728.64	
Tax Paid—per returns—E. P. Tax	\$5,706.661—	
Before post war refund—Normal.....	1,200,737	6,907,398.00
Margin of Tax	\$ 185,330.64	
$\$185,330.64 \div 90\% = \$206,000 = \text{Income Margin.}$		
$\$206,000 \div 5\% = \$4,120,000 \text{ Invested Capital Margin before}$		
80% Max. applies.		

Sched. I
The W.P.R.R. Corporation and Its Affiliated Companies
Estimate of Federal Income and Excess Profits Tax Liability
Jan. 1 to April 30, 1944

Item No.	Consolidated Return—Parent Full Year, Affiliates Jan. 1 to April 30, 1944		Operating Loss (Sec. 23(g) (4) Not Considered Inv. Capital Base—Per Books Invested Capital "Floor"			
			Before Wage Adj. Deduction	After Wage Adj. Deduction	Before Wage Adj. Deduction	After Wage Adj. Deduction
Estimated Net Income, before taxes, Separate Return Basis						
1.	The Western Pacific Railroad Corporation [est. 12 mos. deficit].....	[\$ 105,000—]				
2.	The Western Pacific Railroad Company [act. 4 mos. figure].....	\$ 3,871,250—				
3.	Deduct: Retroactive Wage Adjustment.....	1,064,250—				
		2,807,000—				
4.	Sacramento Northern Railway [4 mos. actual figures].....	[328,600—]				
5.	Tidewater Southern Railway.....	28,100—				
		2,401,500—				
6.	Combined Taxable Net Income					
	Add: Intercompany Interest Deductions					
7.	Corporation Advances to Company	92,000—				
8.	Sacramento Owing to Company on Bonds, Notes and Advances.....	248,100—				
9.	Sacramento Owing to Corporation.....	14,200—				
10.	Company Owing to Corp.—1st Mtg. Bonds	99,600—				
		453,900—				
11.	Consolidated Taxable Net Income.....	2,855,400—	\$3,919,650—	\$2,855,400—	\$3,919,650—	\$2,855,400—
12.	Deduct: Consol. Net Operating Loss Deduction	55,093,000—				
	Less: Adj. Under Sec. 122 (d)	55,093,000—				
13.	Consolidated Taxable Net Income (after Net Oper. Loss Deduction)	[52,237,600—]	3,919,650—	2,855,400—	3,919,650—	2,855,400—
	Add: ½ of interest on Borrowed Capital—					
14.	W.P.R.R. Company—½ (\$1,563,000—)	\$521,000—				
15.	Less: Corp's holding—4 mos. (½ × \$99,600)	49,800—				
		471,200—				
16.	W.P.R.R. Corp. (int. on loans)	51,000—				
		522,200—	522,200—	522,200—	522,200—	522,200—
17.	Adj. of Net Operating Loss—Inv. Cap. Basis	1,596,000—				
18.	Consolidated Excess Profits Net Income	[50,119,400—]	4,441,850—	3,377,600—	4,441,850—	3,377,600—
19.	Deduct: Specific Exemption	10,000—	10,000—	10,000—	10,000—	10,000—
20.	Consol. Excess Profits Credit	6,375,000—	6,375,000—	6,375,000—	3,274,000—	3,274,000—
21.	Consol. Unused Excess Profits Credit Adj. (1943 Carryover).....	8,570,000—	14,955,000—			
			6,385,000—	6,385,000—	3,284,000—	3,284,000—
22.	Consolidated Adjusted Excess Profits Net Income	[65,074,400—]			1,157,850—	93,600—
23.	Consolidated Excess Profits Tax—95% × Item 22				1,099,950—	88,920—
24.	Consolidated Normal-Tax Net Income (Item 13 minus Item 22)	[52,237,600—]	3,919,650—	2,855,400—	2,761,800—	2,761,800—
25.	Consolidated Normal-Tax and Surtax—42% of Item 24		1,646,250—	1,199,300—	1,159,950—	1,159,950—
26.	Total Federal Income and Excess Profits Tax Liability (Item 23 + Item 25)		1,646,250—	1,199,300—	2,259,900—	1,248,870—

Red Figures in Brackets.

[Endorsed]: Filed Feb. 9, 1949.

PLAINTIFF'S EXHIBIT No. 74

The Western Pacific Railroad Company

Western Pacific Building,
526 Mission Street,
San Francisco 5, California.

Air Mail

November 8, 1943.

File B-29-1.

Mr. James K. Polk,
c/o Whitman, Ransom, Coulson and Goetz,
40 Wall Street,
New York, New York.

Dear Mr. Polk:

I am enclosing copy of a computation I have made for an estimate of the year 1943 Federal income and excess profits taxes for the consolidated group for the purpose of arriving at a figure to base our estimated tax accruals upon for the remainder of the current year. Will you be so kind as to have this computation check up and let me know, as soon as you conveniently can, whether there is anything about the principle or fixed figures I have used which is wrong.

The figures shown for "Taxable Net Income" are, of course, purely estimates but they appear conservative at the present time. However, there are many elements which may affect them to a more or less degree so they will be subject to revisions, either up

1810 *Western Pacific R.R. Corp., et al., vs.*

or down, before we close our accounts for the year and whatever changes we find necessary there will correspondingly affect our tax accruals.

Yours truly,

/s/ D. C. DeGRAFF,
General Auditor.

[Endorsed]: Filed Feb. 9, 1949.

The Western Pacific Railroad Company

Estimated Federal Income and Excess Profits Tax—Year 1943

Estimated Consolidated Taxable Net Income, Before Inter-Company Eliminations	
The Western Pacific Railroad Corporation	\$ 353,000
The Western Pacific Railroad Company	17,710,000
Sacramento Northern Railway	618,179
Tidewater Southern Railway Company	35,000
Delta Finance Company, Ltd.	4,000
The Western Realty Company	2,000
Standard Realty and Development Company	6,000
	<hr/>
Total	\$16,781,821

[Italicized figures shown in red]

Add

Inter-Company Eliminations

Interest on First Mortgage Bonds of The W.P.R.R. Co. held by The W.P.R.R. Corp.	\$299,400
Interest on Advances from The W.P.R.R. Corp. to The W.P.R.R. Co.	274,736
Interest on Advances from The W.P.R.R. Corp. to Sacramento Northern Railway	42,813
Interest on Bonds, Notes and Advances of Sacramento Northern Railway held by The W.P.R.R. Co.	750,366
Interest on Advances from The Western Realty Company	2,500
Amortization of Discount on First Mortgage Bonds held by The W.P.R.R. Corp.	9,364
	<hr/>
	1,379,179

Estimated Consolidated Normal Tax Net Income	\$18,161,000
Net Short Term Capital Gain	None
Adjustment of Net Operating Loss Deduction	None
50% of Interest on Borrowed Capital	1,581,000
Total.....	<u>\$19,742,000</u>
Deductions	None
Estimated Consolidated Excess Profits Net Income	\$19,742,000
Estimated Excess Profits Credits	
Invested Capital Estimated same as for year 1942.....	\$147,088,200
\$5,000,000 at 8%	400,000
5,000,000 at 7%	350,000
137,088,200 at 6%	8,225,292
Specific Exemption	5,000
Unused Excess Profits Credit (from 1941)	9,103,360
Total Estimated Excess Profits Credits	<u>\$18,083,652</u>

Estimated Excess Profits Tax Computation		
Estimated Excess Profits Tax Net Income		\$19,742,000
Less Estimated Excess Profits Credits		18,083,652
		<hr/>
Estimated Adjusted Excess Profits Net Income		\$ 1,658,348
90% of \$1,658,348	\$ 1,492,513	
Estimated Net Income		<hr/>
Estimated Surtax Net Income		\$18,161,000
80% of \$18,161,000		18,161,000
Estimated Normal Tax and Surtax Net Income		14,528,800
Less Adjusted Excess Profits Net Income	\$18,161,000	
	1,658,348	
	<hr/>	
	\$16,502,652 @42%	6,931,114
Excess of 80% of Surtax Net Income over Income Tax		<hr/>
		\$ 7,597,686
90% of Estimated Adjusted Excess Profits Net Income		1,492,513
Less Credits for debt retirement—10%		149,251
		<hr/>
Estimated Excess Profits Tax Due		\$ 1,343,262
Net Post-War Refund		None

The Western Pacific Railroad System

Statement Showing Distribution of Income as It Would Be Under
Reorganization Plan, if Effective January 1, 1939
Estimated for Calendar Year 1943

	System
Estimated Total Railway Operating Revenues	\$52,900,000
Net Railway Operating Income	\$12,824,000
Add Other Income	582,000
Deductions from Income—Miscellaneous	178,000
Income Available for Fixed Charges	\$13,228,000
Less Rent for Leased Road & Equipment....\$	3,600
Less Interest on Equipment Obligations.....	89,400
Less Interest on Trustees' Certificates (c)....	135,000
Less Amort. of Disc. on Equip. Obligations	4,500
Less Other Miscellaneous Fixed Charges	5,000
Available Net Income as Defined by Plan.....	\$12,990,500
Maximum Capital Fund	\$500,000
Less Oper. Exp. System Road Retirements	50,000
Less Oper. Exp. Amort. Road	
Defense Projects	130,000
Less Road Property Depreciation	400,000
Income Available for Interest on Income Bonds	\$12,990,500
Less full $4\frac{1}{2}\%$ interest on \$20,887,888	
Income Bonds (b)	939,955 (
Income Available for Sinking Fund on Income Bonds....	\$12,050,545 (
Less Sinking Fund ($\frac{1}{2}\%$ on \$20,887,888	
outstanding (b)	104,439 (
Less $4\frac{1}{2}\%$ on \$331,187 Bonds previously	
redeemed (b)	14,903 (
1943 Income Available for Other Corporate Purposes or	
for Dividends on Stocks.....	\$11,931,203 (

Notes

Income Taxes: As of this date, The System Railroad Companies, constituted during 1943, expect to accrue estimated Federal Income taxes of \$6,931,000 and estimated Excess Profits taxes of \$1,343,000 a total of \$8,274,000. All income figures on the above statement: after such accruals.

Wages: No accounting in above figures for wage increases which may be authorized or for Land Grant *rate reserves* or *maintenance reserves*.

Note A: If any changes are made in original Plan total amount of \$1,219,075 face value of Income Bonds as finally issued to Railroad Credit Corporation, all amounts marked "A" will be modified. The original unpaid interest claim of the R.C.C. (\$146,503) has been materially reduced each year by credits from the Marshalling and Distributing Plan and other payments. These payments will effect reductions in amounts of securities finally issued to Railroad Credit Corporation and effect the totals of certain securities issued under the Plan. (See I.C.C. Plan—Section P-4.)

Note B: Based on amount of \$20,887,888 for value of Income Bonds outstanding January 1, 1943, as it would be after purchases of \$316,673 face value of such bonds by Sinking Fund of 1940-1941-1942 and \$14,674 face value of such bonds purchased from "interest" at $4\frac{1}{2}\%$ on amount equal to face value of all bonds retired by Sinking Fund operations of years prior to 1943.

Note C: Net interest paid on outstanding Trustees' Certificates after deducting 4% on amount of \$6,000,000 cash collateral on deposit with Reconstruction Finance Corporation.

RR Co Ex 898 A

Office of the President,
San Francisco, California,
November 13, 1943 (EWE)

[Endorsed]: Filed Feb. 9, 1949.

PLAINTIFF'S EXHIBIT No. 76

The Western Pacific Railroad Company

Journal

Month of December 1943

Folio
No.

Debit Credit

402 Acct. 767—U.S. Government—Federal Income Taxes\$7,069,052.00

To

580 Acct. 532 C—Railway Tax Accruals\$7,069,052.00

To reverse over-accruals of Federal Income and Excess Profits Taxes
for the years 1942 and 1943 as follows:

Year 1942\$ 9,886.13

Year 1943 7,059,165.87

\$7,069,052.00** Contingent Liability for this amount will appear on General Balance
Sheet as of December 31, 1943, and subsequent months.I hereby certify that the
above entry is correct/s/ C. P. RUSSELL
Ass't. General Auditor

Approved for Entry

/s/ D. C. DeGRAFF
General Auditor

Month Dec. 1943

Number 1536

The Western Pacific Railroad Company
Journal

Folio No.	Month of January 1944		Debit	Credit
592	Acct. 541-P Joint Facility Rents.....		\$1,993.74	
	For this company's proportion of the following rents accruing during the month of January 1944.			
396	Acct. 766—Accrued Interest on Bonds of The Salt Lake City Union Depot and Railroad Co.			\$1,160.41
397	Acct. 766—Sinking Fund for Redemption of Bonds of The Salt Lake City Union Depot and Railroad Company.....			833.33
	Interest			
	Bonds outstanding 1/1/44	\$557,000.00		
	Interest on \$557,000.00 January 1944,			
	One month @ 5% per annum \$2,320.83			
	This Company's Prop. 1/2 of	2,320.83		\$1,160.41
	Sinking Fund			
	November 1, 1943, to October 31, 1944	\$ 20,000.00		
	Less D.&R.G.W. Prop. 50%	10,000.00		
	The Western Pacific RR Co's Prop. 50%	\$ 10,000.00		
	January 1944 Prop. 1/12th of \$10,000.00			833.33
				<u>\$1,993.74</u>

354	Acct. 761—Hospital Fund	166.36	
581	Acct. 532-C—Railway Tax Accruals	1,055,706.35	
600	Acct. 544—Miscellaneous Tax Accruals	4,933.33	
	To		
402	Acct. 767—U.S. Govt.—Federal Income Taxes.....		893,000.00
422	Acct. 767—Accrued Tax Liability—State Counties and Cities		82,669.81
418	Acct. 767—U.S. Govt.—Carriers Taxing Act of 1937— Employers Proportion		44,270.84
423	Acct. 767—U.S. Govt.—Railroad Unemployment Insurance Act.....		40,865.39
	Accrued Taxes for the month of January 1944		
	California	\$ 58,836.81	
	Nevada	18,000.00	
	Utah	5,833.00	82,669.81
	Railroad Unemployment Insurance Act		40,865.39
	Carriers Taxing Act of 1937		44,270.84
	Federal Income Taxes		893,000.00

I hereby certify that the
above entry is correct

/s/ C. P. RUSSELL
Ass't. General Auditor

Approved for Entry

/s/ J. R. WENDT
General Auditor

Month Jan. 1944

Number 1553

Journal

Western Pacific R.R. Company, etc.

1821

Folio No.	Month of March 1944	Debit \$1,993.74	Credit \$1,160.41
592	Acct. 541-P Joint Facility Rents.....		
	For this company's proportion of the following rents accruing during the month of March 1944.		
394	Acct. 766—Accrued Interest on Bonds of The Salt Lake City Union Depot and Railroad Co.		\$1,160.41
397	Acct. 766—Sinking Fund for Redemption of Bonds of The Salt Lake City Union Depot and Railroad Company.....		833.33
	Interest		
	Bonds outstanding 3/1/44		\$557,000.00
	Interest on \$557,000.00 March 1944,		
	One Month @ 5% per annum \$2,320.83		
	This Company's Prop. 1/2 of	2,320.83	\$1,160.41
	Sinking Fund		
	November 1, 1943, to October 31, 1944.....	\$ 20,000.00	
	Less D.&R.G.W. Prop. 50%	10,000.00	
	The Western Pacific RR Co's Prop. 50%	\$ 10,000.00	
	March 1944 Prop. 1/12th of \$10,000.00		833.33
			<u>\$1,993.74</u>

354	Acct. 761—Hospital Fund	184.40	
581	Acct. 532-C—Railway Tax Accruals	1,133,716.39	
600	Acct. 544—Miscellaneous Tax Accruals	4,933.33	
	To		
402	Acct. 767—U.S. Govt.—Federal Income Taxes		932,300.00
422	Acct. 767—Accrued Tax Liability—State Counties and Cities		81,969.81
418	Acct. 767—U.S. Govt.—Carriers Taxing Act of 1937— Employers Proportion		64,773.44
423	Acct. 767—U.S. Govt.—Railroad Unemployment Insurance Act		59,790.87
	Accrued Taxes for the month of March 1944		
	California	\$ 58,136.81	
	Nevada	18,000.00	
	Utah	5,833.00	81,969.81
	Railroad Unemployment Insurance Act		59,790.87
	Carriers Taxing Act of 1937		64,773.44
	Federal Income Taxes		932,300.00

Month Mar. 1944

Approved for Entry

I hereby certify that the
above entry is correct

/s/ C. P. RUSSELL
Ass't. General Auditor

/s/ J. R. WENDT

/s/ D. C. DeGRAFF
General Auditor

Number 1610

Journal

Month of April 1944

Folio No.		Debit	Credit
592	Acct. 541-P Joint Facility Rents..... For this company's proportion of the following rents accruing during the month of April 1944.	\$1,993.79	
394	Acct. 766—Accrued Interest on Bonds of The Salt Lake City Union Depot and Railroad Co.		\$1,160.45
397	Acct. 766—Sinking Fund for Redemption of Bonds of The Salt Lake City Union Depot and Railroad Company.....		833.34
	Interest		
	Bonds outstanding 3/1/44		\$557,000.00
	Interest on \$557,000.00 April 1944, one month @ 5% per annum \$2,320.83		
	This Company's Prop. 1/2 of.....	2,320.83	1,160.45
	Sinking Fund		
	November 1, 1943, to October 31, 1944	\$ 20,000.00	
	Less D.&R.G.W. Prop. 50%	10,000.00	
	The Western Pacific RR Co's Prop. 50%	\$ 10,000.00	
	April 1944 Prop. 1/12th of \$10,000.00		833.34
			<u>1,993.79</u>

354	Acct. 761—Hospital Fund	173.69	
581	Acct. 532-C—Railway Tax Accruals	1,483,896.87	
600	Acct. 544—Miscellaneous Tax Accruals	4,933.33	
	To		
402	Acct. 767—U.S. Govt.—Federal Income Taxes.....		1,282,700.00
422	Acct. 767—Accrued Tax Liability—State Counties and Cities		92,369.81
418	Acct. 767—U.S. Govt.—Carriers Taxing Act of 1937— Employers Proportion		59,245.72
423	Acct. 767—U.S. Govt.—Railroad Unemployment Insurance Act.....		54,688.36
	Accrued Taxes for the month of April 1944		
	California	\$ 68,536.81	
	Nevada	18,000.00	
	Utah	5,833.00	92,369.81
	Railroad Unemployment Insurance Act		54,688.36
	Carriers Taxing Act of 1937		59,245.72
	Federal Income Taxes		1,282,700.00

I hereby certify that the
above entry is correct

/s/ C. P. RUSSELL
Ass't. General Auditor

Approved for Entry

/s/ D. C. DeGRAFF
General Auditor

Month Apr. 1944

Number 1642

The Western Pacific Railroad Corporation and Its Affiliates

Federal Income Taxes and Excess Profits Taxes on a Separate Return Basis
(Using Data as Actually Shown in Consolidated Returns Filed)

Western Pacific R.R. Company, etc.

1825

	Year 1942	Year 1943	Period January 1 to April 30, 1944	Total
The Western Pacific Railroad Corporation:				
Excess profits tax	None	None	None	
Income tax	None	None	None	
Total.....	None	None	None	None
The Western Pacific Railroad Company:				
Excess profits tax	\$4,713,594.03	\$10,415,729.54	\$1,295,616.56	
Income tax	2,170,104.09	2,167,612.77	583,910.25	
Total.....	6,883,698.12	12,583,342.31	1,879,526.81	\$21,346,567.24
Sacramento Northern Railway:				
Excess profits tax	None	None	None	
Income tax	127,527.71	51,696.87	None	
Total.....	127,527.71	51,696.87	None	179,224.58
Tidewater Southern Railway Company:				
Excess profits tax	None	None	None	
Income tax	55,907.03	19,843.16	2,460.73	
Total.....	55,907.03	19,843.16	2,460.73	78,210.92

	Year 1942	Year 1943	Period January 1 to April 30, 1944	Total
Deep Creek Railroad Company:				
Excess profits tax	None	None	None	
Income tax	None	None	None	
Total.....	None	None	None	None
The Western Realty Company:				
Excess profits tax	None	None	None	
Income tax	6,168.43	4,562.82	507.75	
Total.....	6,168.43	4,562.82	507.75	11,239.00
Standard Realty and Development Company:				
Excess profits tax	None	None	None	
Income tax	124.83	2,869.97	40.39	
Total.....	124.83	2,869.97	40.39	3,035.19
Delta Finance Company:				
Excess profits tax	910.57	None	None	
Income tax	2,265.06	906.15	None	
Total.....	3,175.63	906.15	None	4,081.78
Grand Total:				<u>\$21,622,358.71</u>

Federal Income and Excess Profits Taxes on a Separate Return Basis (using data as actually shown in consolidated returns filed, and giving each affiliate the benefit of any operating loss carryover or unused excess profit credit carryover attributable to it, though contrary to Reg. 110, Sec. 33.31 (e) and (f).)

	Year 1942	Year 1943	Period January 1 to April 30, 1944	Total
The Western Pacific Railroad Corporation:				
Excess profits tax	None	None	None	
Income tax	None	None	None	
Total.....	None	None	None	None
The Western Pacific Railroad Company:				
Excess profits tax	None	\$ 4,180,935.84	\$1,295,473.65	
Income tax	\$4,322,492.75	5,246,929.22	526,799.08	
Total.....	4,322,492.75	9,427,865.06	1,822,272.73	\$15,572,630.54
Sacramento Northern Railway:				
Excess profits tax	None	None	None	
Income tax	2,969.74	51,675.45	None	
Total.....	2,969.74	51,675.45	None	54,645.19
Tidewater Southern Railway Company:				
Excess profits tax	None	None	None	
Income tax	55,907.03	19,843.16	2,460.73	
Total.....	55,907.03	19,843.16	2,460.73	78,210.92

	Year 1942	Year 1943	Period January 1 to April 30, 1944	Total
Deep Creek Railroad Company:				
Excess profits tax	None	None	None	
Income tax	None	None	None	
Total.....	None	None	None	None
The Western Realty Company:				
Excess profits tax	None	None	None	
Income tax	6,168.43	None	299.42	
Total.....	6,168.43	None	299.42	6,467.85
Standard Realty and Development Company:				
Excess profits tax	None	None	None	
Income tax	None	2,869.97	40.39	
Total.....	None	2,869.97	40.39	2,910.36
Delta Finance Company, Ltd.:				
Excess profits tax	None	None	None	
Income tax	349.42	906.15	None	
Total.....	349.42	906.15	None	1,255.57
Grand Total:				<u>\$15,716,120.43</u>

Basis Three

The Western Pacific Railroad Corporation and Its Affiliates
Federal Income Taxes and Excess Profits Taxes on Basis of Consolidated Returns
as Filed But Excluding Corporation's Stock Loss

	Period January 1 to*		
	Year 1942	Year 1943	April 30, 1944
Excess profits tax.....		\$2,078,294	\$1,115,447
Income tax	\$4,201,821	6,492,109	579,903
	<u>\$4,201,821</u>	<u>\$8,570,403</u>	<u>\$1,695,350</u>
			<u>\$3,193,741</u>
			<u>11,273,833</u>
			<u>\$14,467,574</u>

* Corporation's excess profits credit for 1944 prorated.

[Endorsed]: Filed Feb. 9, 1949.

DEFENDANT'S EXHIBIT No. 1

To record transfer of ownership of the capital stock to the Reorganization Committee of the Western Pacific Railroad Company, in accordance with request of the said Committee made under and pursuant to order dated December 17, 1943, of the District Court of the United States for the Northern District of California, Southern Division, and also under and pursuant to agreement dated November 22, 1943, between the Western Pacific Railroad Corporation, its secured creditors and said Reorganization Committee, in respect of which approval of the stockholders was given at special meeting held on April 20, 1944.

[Endorsed]: Filed Feb. 4, 1949.

DEFENDANTS' EXHIBIT No. 2

4/20/44

Memorandum Entry

Loss as result of reorganization of subsidiary:

Capital Stock—The Western Pacific Railroad Company.

To record transfer of ownership of the capital stock to the Reorganization Committee under Plan of Reorganization of the Western Pacific Railroad Company, pursuant to order of the Federal District Court for the Northern District of California, dated December 17, 1943, and also under and pursuant

to an Agreement, dated November 22, 1943, between The Western Pacific Railroad Corporation, its secured creditors and said Reorganization Committee and approval of the stockholders of The Western Pacific Railroad Corporation given at special meeting held April 20, 1944.

[Endorsed]: Filed Feb. 4, 1949.

DEFENDANTS' EXHIBIT No. 3

New York, February 5, 1935.

Mr. Schumacher:

In re the Corporation's situation in connection with proposed recapitalization of The Denver and Rio Grande Western Railroad Company and the Western Pacific Railroad Company:

We have prepared a statement showing new set-up of assets of the Corporation, if and when the present proposals for readjustments of the two companies mentioned become effective. There are two statements herewith:

(1) Securities Assignable by Proposed Readjustment of Capitalization of the Western Pacific Railroad Company and The Rio Grande Western Railroad Company in Exchange for Existing Securities Owned and List of Other Assets Owned Remaining Undisturbed.

(2) Schedule of Securities Owned if Proposed Readjustment of Capitalization of The Western Pacific Railroad Company and The

Defendants' Exhibit No. 3—(Continued)

Denver and Rio Grande Western Railroad Company is effected.

The income to the Corporation, which, as you know is entirely from interest received from securities owned, will be very materially reduced, as you will note from Statement #2. The income from the first mortgage bonds received in exchange for certain of the Corporation securities on the basis proposed would amount to approximately \$190,000. However, the income will, no doubt, be increased through income derived from income bonds in the contingent class. I believe it is safe to assume we would get some return from the Incomes, inasmuch as the annual fixed interest set up for both companies based on their net income, even in the poorest year, 1932, was earned. The years '33 and '34 had net income more than sufficient to take care of the proposed First Mortgage Bonds and if business conditions continue to show an upward trend, there should be earnings applicable to the income bonds.

We must also not overlook the fact that the Corporation's loans with The Chase National Bank, Curtiss Southwestern Company and Central Hanover Bank amount to \$9,299,850. The interest per annum on these amounts to approximately \$467,000 being 5% of The Chase and Curtiss and 4½% on the Central Hanover. In addition, our general expenses including taxes, salaries, transfer and registry fees, and office expenses, amount to approximately \$60,000 per year. This is a total of approxi-

Defendants' Exhibit No. 3—(Continued)

mately \$527,000 per annum covering general expenses and interest on loans.

From the above it will be seen that we will be considerably short of our requirements for meeting this overhead.

As I see it from a Corporation viewpoint, if we are to carry on, we should endeavor to get our creditors to declare a moratorium on interest payments for possibly two years with the understanding that, if there is income applicable to payment of such interest, it will be paid.

An Agreement on the part of the said creditors to reduce the interest on their loans to $2\frac{1}{2}\%$ would not see us through as the charge would be in excess of our receipts.

Another thing in connection with this is that under the Railroad Company's proposal Preferred Stock of the operating company is to be distributed to First Mortgage Bondholders as a bonus in the proportions of 25% of principal amount of First Mortgage Bonds held and 100% of 1934 deferred interest on such bonds. As all of this stock, as well as the common, is owned by the Corporation, if such an arrangement is affected, it will be necessary to call special meeting of stockholders to approve it.

M. J. CURRY.

[Marginal note]: Noted and discussed by Mr. Schumacher, 2/11/35.

		of
and The Denver & Rio Gran		
d Remaining Undisturbed		
		—
The Denver and Rio		
		00
60%		
General Income		
Mtg. Convertible		
4% Series "A"		
Bds. (Non-Cum.)		
		00
\$ 6,000		
218,400		
\$224,400		00
		00

Defendants' Exhibit No. 3—(Continued)

The Western Pacific Railroad Corporation

Securities Assignable by Proposed Readjustment of Capitalization of The Western Pacific Railroad Company and The Denver & Rio Grande Western Railroad Company in Exchange for Existing Securities Owned and List of Other Assets Owned Remaining Undisturbed

Existing Securities and Other Assets Owned as of December 31, 1934		The Western Pacific Railroad Company				The Denver and Rio Grande Western Railroad Company				
	Amount	Undisturbed	40% 1st. Mtg. 4% Fixed Int. Bonds	60% 1st. Mtg. 4% Adjustment Income Bonds (Cumulative)	4% Preferred Stock (Non-Cumulative)	40% 1st Mortgage 4% Series "A" Bonds	60% General Income Mtg. Convertible 4% Series "A" Bds. (Non-Cum.)	100% Convertible Income Series "A" 5% Notes (Non-Cum.)	1st. Preferred \$5 Participating Stock—No Par (Shares)	Common Stock No Par (Shares)
The Western Pacific Railroad Co.										
1st. Mtg. Bonds 5%—1946	\$11,702,000		\$4,680,800	\$7,021,000	\$2,925,500—25%					
{Deferred Interest—1934	585,100				585,100—100%					
Preferred Stock	28,300,000		Contributed to Reorganized Company							
Common Stock	47,500,000	\$47,500,000								
Advances	5,639,722		To be cancelled							
The Denver & Rio Grande RR. Co.										
1st. Con. Mtg. Bonds 4%—1936	10,000					\$ 4,000	\$ 6,000			
The Rio Grande Western Ry. Co.										
1st. Con. Mtg. Bonds 4%—1949	364,000					145,600	218,400			
The D. & R. G. W. Railroad Co.										
Rfdg. & Imp. Bonds 6%—1974	1,000,000									
{General Mtg. Bonds 5%—1955	3,751,875								10,000	
{Unpaid Interest to 1/1/35	218,855							\$3,751,875		
Preferred Stock 6% (Par \$100)	2,070,000							218,855		
Common Stock (No Par) Shares	150,000								20,700	37,500
Totals.....		\$47,500,000	\$4,680,800	\$7,021,000	\$3,510,600	\$149,600	\$224,400	\$3,970,730	30,700	37,500
Assets Remaining—Undisturbed										
Sacramento Nor. Ry.—Advances	856,260									
Standard R. & D. Co. Advances.....	120,000									
The Western Realty Co.										
*Capital Stk. 3005 Shs. (Book Val.)....	1,500,000									
Tidewater Sou. Rwy. 5%										
1st. Mtg. Bonds—1942	100,000									
The D. & R. G. W. RR. Company										
Note Receivable (Non Interest)	17,500									
The Rio Grande Sou. RR. Co.										
1st. Mtg. Bonds 4%—1940 (In default)	4,000									
Equity in Utah Fuel Co. Capital Stk. 50,000 Shs. (No-Par Value)										

* Subject to \$788,000 loan from The Western Realty Company.

Defendants' Exhibit No. 3—(Continued)

The Western Pacific Railroad Corporation
 Schedule of Securities Owned if Proposed Readjustment of Capitalization of the Western Pacific Railroad Company
 and The Denver and Rio Grande Western Railroad Company Is Effected

		Assured Annual Interest	Contingent Annual Interest
The Western Pacific Railroad Company	Par Value		
First Mortgage Fixed Interest Bonds 4%.....	\$ 4,680,800.00	\$187,232.00	
First Mortgage Adjustment Income Bonds 4% (Cum.)	7,021,200.00		\$280,848.00
Preferred Stock—4% (non-cumulative) Par \$100.....	3,510,600.00		
Common Stock	47,500,000.00		
The Denver and Rio Grande Western Railroad Company			
First Mortgage, Series A, Bonds 4%.....	149,600.00	5,984.00	
General Income Mtg. Convertible Series A Bonds, 4% (Non-Cum.)	224,400.00		8,976.00
Convertible Income Series A Notes 5% (Non-Cum.).....	3,970,730.00		198,536.50
First Preferred \$5 Participating Stock—No Par—shs. 30,700			
Common Stock—No Par—shs. 37,500			
Totals.....		<u>\$193,216.00</u>	<u>\$488,360.50</u>
*Interest Charges and General Expenses			
The Chase National Bank of the City of New York—Notes 5%	\$ 4,186,000.00	\$212,206.95	
Central Hanover Bank & Trust Company— Notes 4½%	635,000.00	28,575.00	
Curtiss Southwestern Company—Notes 5%	4,478,850.00	227,052.85	
Total Interest Expense.....		<u>\$467,834.80</u>	
General Expenses		60,000.00	
Taxes		2,550.00	
Total Interest and General Expenses.....		<u><u>\$530,384.80</u></u>	

* Interest on the \$788,000 loan from The Western Realty Company not included.

0-2/4/35

[In pencil on margin: Balance free funds in Chase Bank 2/1/35 \$140,521.]

Defendants' Exhibit No. 3—(Continued)

The Western Pacific Railroad Corporation

Loans Payable and Supporting Collateral if Proposed Readjustment of Capitalization of The Western Pacific Railroad Company and The Denver and Rio Grande Western Railroad Company Is Effected

Loans

The Chase National Bank City of New York.....\$4,186,000.00

Collateral

\$1,785,600 The W.P.R.R.Co. 1st Mtg. Fixed Int. Bonds 4%
 2,678,400 The W.P.R.R.Co. 1st Mtg. Adj. Inc. Bds. 4% (Cum.)
 1,339,200 The W.P.R.R.Co. Pfd. Stock 4% (Non-Cum.) Par \$100.
 28,700 Shares The D&RGW 1st Pfd. \$5. Participating Stock—
 No Par—(Non-Cum.)
 3,970,730 The D&RGW Convertible Income Series "A" Notes 5%
 (Non-Cum.)

Central Hanover Bank & Trust Company.....\$635,000.00

Collateral

496,800 The W.P.R.R.Co. 1st Mtg. Fixed Int. Bonds 4%
 745,200 The W.P.R.R.Co. 1st Mtg. Adj. Inc. Bds. 4% (Cum.)
 372,600 The W.P.R.R.Co. Pfd. Stock 4% (Non-Cum.) Par \$100.
 149,600 The D&RGW RR. 1st Mtg. Series "A" Bonds 4%
 224,400 The D&RGW RR. Gen'l. Income Mtg. Convertible Series
 "A" Bds. 5% (Non-Cum.)
 11,248.86—Cash on Deposit (Pledged)

Murtiss Southwestern Company\$4,478,850.00

Collateral

2,392,000 The W.P.R.R.Co. 1st Mtg. Fixed Int. Bonds 4%
 3,588,000 The W.P.R.R.Co. 1st Mtg. Adj. Inc. Bds. 4% (Cum.)
 1,794,000 The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.) Par \$100
 2,000 Shares The D&RGW 1st Pfd. \$5. Participating Stock—
 No-Par (Non-Cum.)
 300,500 The Western Realty Co.—Capital Stock—Par \$100.

Defendants' Exhibit No. 3—(Continued)

The Western Pacific Railroad Corporation

Loans		Amount		Present Collateral		Status of Collateral if Proposed Readjustment of Capitalization of The Western Pacific Railroad Company and The Denver and Rio Grande Western Railroad Company Is Effected	
The Chase National Bank							
City of New York		\$4,186,000.00		The W.P.R.R.Co. 1st Mtg. Bds. 5%		\$4,464,000.00	
				40%		The W.P.R.R.Co. 1st Mtg. Fixed Int. Bds. 4%	
				60%		The W.P.R.R.Co. 1st Mtg. Adj. Inc. Bds. 4% (Cum.)	
				25%		The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.)	
				100%		The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.) (1934 Defr'd Int)	
						223,200.00	
				The D&RGWRR. Co. Rfdg. Imp. Mtg. Bds. 6%		800,000.00	
				100%		The D&RGW. RR. 1st. Pfd. \$5 Participating Stk.—No Par—shares..	
						8,000	
				The D&RGWRR. Co. Gen'l. Mtg. Bds. 5%		3,751,875.00	
				100%		The D&RGW. RR. Convertible Inc. Series "A" Notes 5% (Non-Cum.)	
						3,751,875.00	
						The D&RGW. RR. Convertible Inc. Series "A" Notes 5% (Unpaid Int. to 1/1/35)	
						218,855.00	
				The D&RGWRR. Co. Pfd. Stock		2,070,000.00	
				100%		The D&RGW. RR. 1st. Pfd. \$5 Participating Stock—No Par—shs....	
						20,700	
Central Hanover Bank & Trust Co.		635,000.00		The W.P.R.R.Co. 1st Mtg. Bds. 5%		1,242,000.00	
				40%		The W.P.R.R.Co. 1st Mtg. Fixed Int. Bds. 4%	
				60%		The W.P.R.R.Co. 1st Mtg. Adj. Income Bds. 4% (Cum.)	
				25%		The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.)	
				100%		The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.) (1934 Defr'd Int)	
						62,100.00	
				The D&RGW RR. Co. 1st Con. Mtg. Bds. 4%		10,000.00	
				40%		The D&RGWRR Co. 1st Mtg. Series "A" Bonds 4%	
				60%		The D&RGWRR Co. Gen'l. Inc. Mtg. Convertible Series "A" Bonds 5% (Non-Cum.)	
						6,000.00	
				The R.G.W.Ry. 1st Con. Mtg. Bds. 4%		364,000.00	
				40%		The D&RGWRR Co. 1st Mtg. Series "A" Bonds 4%	
				60%		The D&RGWRR Co. Gen'l. Inc. Mtg. Convertible Series "A" Bonds 5% (Non-Cum.)	
						218,400.00	
				Cash on Deposit (Pledged)		11,248.86	
				100%		Cash on Deposit (Pledged)	
						11,248.86	
Curtiss Southwestern Company		4,478,850.00		The W.P.R.R.Co. 1st Mtg. Bonds 5%		5,980,000.00	
				40%		The W.P.R.R.Co. 1st Mtg. Fixed Interest Bonds 4%	
				60%		The W.P.R.R.Co. 1st Mtg. Adj. Income Bonds 4% (Cum.)	
				25%		The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.)	
				100%		The W.P.R.R.Co. Preferred Stock 4% (Non-Cum.) (1934 Defr'd Int)	
						299,000.00	
				The D&RGW RR Co. Rfdg. & Imp. Mtg. Bds. 6%		200,000.00	
				100%		The D&RGWRR Co. 1st Pfd. \$5 Participating Stk.—No Par—shares	
						2,000	
				The Western Realty Co. Capital Stk. Par.		300,500.00	
						The Western Realty Co. Capital Stock—Par Value.....	
						300,500.00	

Defendants' Exhibit No. 3—(Continued)

[Stamped]: T.M.S. Sept. 19, 1938.

Memorandum

September 15, 1938

Mr. Schumacher:

Re: Cash Condition of the Corporation.

Referring to our several discussions recently on the above subject.

Have given serious thought to question of economies that may be effected in connection with operations of the Corporation for the year 1939, and, as a result of such study, I would recommend, for one thing, consideration be given to taking over in this office from the Chase Bank, the work of handling transfer of our stock and incidental services in connection therewith.

Attached is a statement showing cost of services of the Chase National Bank as Stock Transfer Agent for the years of 1926-1937 inclusive.

You will note the total cost over the period covered was \$72,522.39, an average per annum of \$6,043.55.

Of this amount, there are certain charges, such as stationery, printing, binding and postage, upon which no savings can be effected. These items amounted to \$6,436.11 for the period, a per annum average of \$536.34.

Deducting these charges leaves a net amount of possible net savings if the work is handled in this office of approximately \$5500 per annum.

Defendants' Exhibit No. 3—(Continued)

I am satisfied, after discussing this with Mr. Andrews, that he, with the assistance of our other employees, can take on this work and handle it efficiently and expeditiously. If we employed Hatton to do this, in addition to his services as transfer agent for the Denver, it would mean, we would have to place him on some salary with the Corporation, which would have the effect of further reducing the possible savings mentioned above.

If it is decided to do the work in this office, the cost of necessary equipment such as, bookkeeping records, addressograph, file cabinets, etc. cannot be estimated, as we have hesitated to go into the subject with the officer of the Chase Bank who is in charge of our transfer work. If you feel we should contact him to ascertain all facts in connection with this proposal, we will do so. This, of course, would give them advance notice we are contemplating taking the work away from them. Whether or not this would affect our status with the Chase Bank is a question. That is the reason I have hesitated to approach them on the subject, as yet.

I find, the Corporation's By-Laws, under Section 2, Article 5, Capital Stock; it provides:

“The Board of Directors or Executive Committee may provide for registration and transfer of the Capital Stock of the Corporation of both classes in the City of New York, and in such other places within or without the United States as they may

Defendants' Exhibit No. 3—(Continued)

deem advisable and, for such purpose, may appoint the necessary registrars and transfer agents (who may be either Corporation or individuals), and other officers. * * *"

Under the above recited provision, the Board or the Executive Committee can designate who the transfer agent may be. As I understand it, if it is decided we should take this over, we would simply have to notify the Chase Bank, and the Board could designate its office in New York as the Transfer Office.

Another item on which I am certain we can effect a saving, is rental. Our present lease expires May 1, 1939. We are now paying \$7,000 per annum, for approximately 2500 sq. ft., over \$3.00 per foot. In the first place, for our purposes, we do not require that amount of space. I feel that an arrangement can be made with the Chase Bank or for space in some other building in this vicinity, on a basis of \$2.00 a foot, for approximately 2,000 sq. ft. or \$4,000 annual rental, which would be a reduction of \$3,000 from the present rental.

As a matter of information, we have four employees on our Corporation payroll receiving salaries as follows:

	Per Month	Per Annum
Secretary to President	\$187.50	\$2,250.00
Clerk-Accountant	216.66	2,600.00
Stenographer	67.50	810.00
Telephone Operator	55.00	660.00
	<hr/>	<hr/>
	\$526.66	\$6,320.00

Defendants' Exhibit No. 3—(Continued)

Assuming we take over the transfer work and that we will be successful in arranging for sufficient office space at a lesser cost, these two items will result in approximate saving of \$8500 per year.

We are, and have been, for several years, very watchful of the expense of operation of this office, and, in my opinion, it has been kept to the minimum. This, of course, we will continue to do and should any other means of further reducing the cost be discovered, we will take advantage of it.

Another means of reducing the cost of operations is to endeavor to get the Operating Company to bear a larger proportion of the salaries paid to our employees. The division of the total salaries paid at present is approximately 52% by the Corporation and 48% by the Company. These percentages, in my opinion, should be changed, for the reason that a greater portion of time and labor by such employees is being given to Railroad Company matters. We feel the proper division should be 75% Company and 25% Corporation. As you will note from statement above of salaries paid, the total for four employees is \$6320.00 per annum, which, I am sure you will agree, is not comparable to salaries paid generally in other Railroad offices for similar work.

Consideration should also be given to the Railroad Company paying a greater share of the rental. I would suggest, it be divided in the same manner

Defendants' Exhibit No. 3—(Continued)

as suggested for the salaries, that is, 25% by the Corporation and 75% by the Company.

I will discuss with you further at your convenience.

M. J. CURRY.

Defendants' Exhibit No. 3—(Continued)

The Chase National Bank of the City of New York

Charges as Transfer Agent, Common and Preferred Stocks of The Western Pacific Railroad Corporation

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	Total for 12 years, 1926/37 inc.	Average for 12 yr. period, 1926/37 inc.
Annual fee	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 6,000.00	\$ 500.00
Excess certificates issued	2,229.75	3,176.75	957.25	1,051.50	771.50	633.00	615.00	1,264.95	2,115.40	1,106.00	1,310.05	1,639.05	16,870.20	1,405.85
Excess accounts maintained	5,096.99	3,899.24	3,460.12	3,155.25	2,971.00	2,882.25	2,923.51	2,378.84	2,212.44	2,188.99	2,137.89	2,061.50	35,368.02	2,947.34
Sealing certificates				17.50	17.50		8.75		25.20	7.00	10.50	31.50	117.95	9.83
x Stationery, printing and binding	576.85	110.41	162.38	52.72	70.88	42.81	33.59	72.57	112.89	66.32	107.47	74.99	1,483.88	123.66
x Registered mail and postage	142.12	94.05	24.89	30.95	74.69	67.00	74.76	49.54	49.91	43.55	57.49	50.03	758.98	63.25
Annual report—mailing	172.00	178.75	145.75	188.25	121.00	115.50	121.00	123.75	126.50	129.25	123.75	121.00	1,666.50	138.88
Annual report—postage	163.14	162.87	237.42	213.43	194.99	207.20	194.36	202.55	205.47	210.60	202.46	195.84	2,390.33	199.19
Annual meeting—list	137.50	137.50	127.50	56.25	53.75	52.50	55.00	210.95	210.93	215.63	206.25	207.86	1,671.62	139.30
Annual meeting—proxies	242.50	175.00	175.00	175.00	175.00	175.00	175.00	140.63	123.75	126.50	122.00	119.25	1,924.63	160.39
x Annual meeting—postage	110.02	109.27	101.25	150.00	171.64	124.71	133.53	127.79	128.79	130.91	125.71	122.90	1,536.52	128.04
Special meeting—list											215.63		215.63	17.97*
Special meeting—proxies											152.75		152.75	12.73*
x Special meeting—postage											266.40		266.40	22.20*
Extra list charges			28.00		81.00									
Dividend services	932.25	818.58	234.15									5.00	1,984.98	165.42†
Total Cost handled by the Chase Bank	\$10,303.12	\$9,362.42	\$6,153.71	\$5,590.85	\$5,202.95	\$4,799.97	\$4,834.50	\$5,071.57	\$5,811.28	\$4,724.75	\$5,538.35	\$5,128.92	\$72,522.39	\$6,043.55
Savings that might be effected if handled in this office	\$ 9,310.99	\$8,885.82	\$5,627.77	\$5,143.75	\$4,690.75	\$4,358.25	\$4,398.26	\$4,619.12	\$5,314.22	\$4,273.37	\$4,778.82	\$4,685.16	\$66,086.28	\$5,507.19
x Charges upon which no savings can be effected	\$ 992.13	\$ 476.60	\$ 525.94	\$ 447.10	\$ 512.20	\$ 441.72	\$ 436.24	\$ 452.45	\$ 497.06	\$ 451.38	\$ 759.53	\$ 443.76	\$ 6,436.11	\$ 536.34

*—1 year.

†—3 years.

Defendants' Exhibit No. 3—(Continued)

[Stamped]: T.M.S. Sept. 21, 1938.

Memorandum

New York, September 20, 1938.

Mr. Schumacher:

Referring to my memorandum September 15th re cash condition of the Corporation and comments therein, relative Railroad Company bearing a larger share of salaries of our joint employees:

Your salary, as Trustee and Chairman of the Executive Committee, being fixed by the Court at \$15,000 per annum cannot be changed. All others employed in this office (with one exception mentioned below), including myself, are on the payrolls of the Company and the Corporation.

Mr. James, Chairman of the Board, is on Company payroll at \$5,000 per annum, nothing from the Corporation.

Pierce & Greer, Counsel, are on the payrolls for \$10,000 per annum divided 50/50 between the Corporation and Company.

We have one employee, Miss O'Neill, on Company payroll at \$1,560 per annum, does not receive any salary from the Corporation.

In line with recommendation in memo referred to, I show below the names, salaries paid by Company and Corporation at present, what they would amount to if divided on basis of 75% Company and 25% Corporation, and the totals. It will be noted

Defendants' Exhibit No. 3—(Continued)

the salaries paid now by the Company amount to \$10,700 per annum, whereas, under arrangement suggested this would be increased to \$16,815, a net increase in the Company payroll of \$6,115 per annum.

I cannot help feeling that under the conditions existing at the present time which will, no doubt, continue through 1939 and possibly beyond that, the division of these salaries on basis suggested is justified. If you agree, it might be well to take the question up with Mr. Ehrman to ascertain if he is willing to join you in instructing Mr. Elsey to arrange accordingly.

	Present		Proposed		Total
	Company	Corpn.	Company	Corpn.	
M. J. Curry	\$ 4,500	\$ 5,400	\$ 7,425	\$ 2,475	\$ 9,900
C. E. Andrews	2,420	2,600	3,765	1,255	5,020
W. C. Mittelberg....	2,070	2,250	3,240	1,080	4,320
M. C. Valouch	930	810	1,305	435	1,740
C. C. Sheehan	780	660	1,080	360	1,440
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	\$10,700	\$11,720	\$16,815	\$ 5,605	\$22,420
% of Total.....	47.73	52.27	75.	25.	

M. J. CURRY.

T.M.S.

SEP 21 1938

~~W. J. & H. J.~~
 This will incur Co's

expense \$6.115 per year

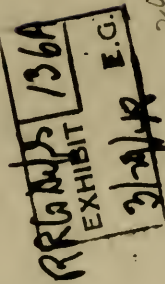
how much will this be

reduced by other paid

during year from 1937,

rent etc

W. J.



12/2/16

203 H

Defendants' Exhibit No. 3—(Continued)

Memorandum

New York, September 21, 1938.

Mr. Schumacher:

Your memorandum attached:

As a partial offset to proposed increase in Company payroll of \$6,115 per annum, we feel certain a saving can be effected beginning May 1, 1939, in our rental. Our present lease with the Chase Bank is on basis \$7,000 per annum divided 50/50 between Corporation and Company. We have approximately 2500 sq. ft. of space, more than we actually need. When question of renewal comes up it is my purpose to request reduction in rental to approximately \$4,000 per annum; failing in that we can, no doubt, secure desirable and adequate space in some other building at that rental. If proposed basis of dividing rental is arranged, that is, 75% to be paid by the Company and 25% by the Corporation, this change in rental will result in a saving of \$3,000, or \$2,500 to the Corporation and \$500 to the Company, over what it is costing at the present time. Applying this saving to the proposed increase in payroll of \$6,115 per annum, would result in a net total increase in cost of operation of this office of \$5,615 per annum.

So far as effecting any savings in our general expenses is concerned, I don't believe anything more can be done as we are now and have been for

Defendants' Exhibit No. 3—(Continued)
several years watching these expenses closely and have brought them down to the minimum.

Below is a recapitulation of expenses for 8 months of this year, January 1 - August 31, 1938, inclusive:

		% of Total
Salaries of officers and clerks	\$24,522.97	78.08
Travelling expenses	2,306.04	7.34
Stationery and printing	107.06	.34
Transfer and registry	1,194.38	3.80
Fees—Executive Committee meetings.....	60.00	.19
General expenses	437.12	1.39
Rent	2,333.36	7.44
Miscellaneous	445.66	1.42
Total.....	\$31,406.59	100.00

An average of approximately \$4,000 per month.

As will be seen from the above—outside of salaries, rent, transfer and registry charges and travelling expenses, our “general and miscellaneous expense” amounts to approximately \$130 per month.

Included in item “General and miscellaneous expense” are the following charges: telephone, telegraph, stationery, printing, Executive Committee fees, postage, subscriptions (Official Guide, Standard Statistics service, Poor’s Railroad Manual, Moody’s Industrial Manual and other railway publications), etc.

Transfer and registry charges cover services of the Chase Bank and Central Hanover Bank in connection with payment of interest on our outstanding Trustees’ and Equipment Trust Certificates.

Defendants' Exhibit No. 3—(Continued)

It is my understanding that while the Company is undergoing reorganization, in order to avoid possibility of some creditor stepping in and taking any funds that might be on deposit here in New York to the credit of the Railroad Company, it was decided to designate these banks as the Paying Agents on the certificates. The same situation exists so far as the D&RGW is concerned. The Trustees have designated the Chase Bank as the Paying Agent on their certificates rather than the office of Hatton, Assistant Secretary and Assistant Treasurer.

When the first issue of \$3,000,000 Trustees' Certificates was sold, question of payment of the principal and interest at maturity was the subject of correspondence between you and Mr. Ehrman. In Mr. Ehrman's letter to you of November 12, 1936, he stated:

"In this connection, we will also have to make arrangements for the payment of outstanding certificates when they come in on January 2nd. I doubt whether we have the facilities at the office to take care of this and would suggest that it be put in the hands of some bank or trust company to whom we could refer certificate holders who present the certificates for payment."

In your reply to Mr. Ehrman, you stated:

"* * * , as the major amount of such certificates are held here in the east, it might be desirable to have them presented to The Chase National Bank

Defendants' Exhibit No. 3—(Continued)
of the City of New York, as Agent, for payment
and they in turn can handle with the Crocker
Bank. * * * "

M. J. CURRY.

[Stamped]: T.M.S. Sept. 26, 1938.

Memorandum

New York, September 23, 1938

Mr. Schumacher:

With further reference to question of the Railroad Company bearing a larger share of salaries of joint employees:

As requested, I show below figures based on the division of salaries and rental of 66 $\frac{2}{3}$ % Company and 33 $\frac{1}{3}$ % Corporation, instead of 75% and 25%, respectively, as suggested in my memo 20th.

	Present		Proposed		
	Company	Corpn.	Company	Corpn.	Total
M. J. Curry	\$ 4,500	\$ 5,400	\$ 6,600	\$ 3,300	\$ 9,900
C. E. Andrews	2,420	2,600	3,347	1,673	5,020
W. C. Mittelberg....	2,070	2,250	2,880	1,440	4,320
M. C. Valouch	930	810	1,160	580	1,740
C. C. Sheehan	780	660	960	480	1,440
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	\$10,700	\$11,720	\$14,947	\$ 7,473	\$22,420
% of Total	47.73	52.27	66 $\frac{2}{3}$	33 $\frac{1}{3}$	

It will be seen that if the Company takes over the salaries of these joint employees on the suggested percentages, 66 $\frac{2}{3}$ Company and 33 $\frac{1}{3}$ Cor-

Defendants' Exhibit No. 3—(Continued)

poration, it will result in an increase in the Company's New York Office payroll of \$4,247 per annum.

If reduction in rental can be effected, as suggested, this would result in a saving in this item, on basis percentages above-mentioned, of \$834, making a total increase to be assumed by the Company of \$3,413 per annum.

M. J. CURRY.

Memorandum

New York, November 28, 1938

Mr. Schumacher:

After payment of salaries, checks for which are enclosed for your signature, it will leave a balance on deposit with the Chase Bank of \$3,472.88. We have on hand unpaid bills amounting to \$972.28, as follows:

Chase National Bank—Rent and Light.....	\$597.99
Chase National Bank, Services.....	120.11
N. Y. Trust Co., Services	40.35
N. Y. Telephone Co., Phone.....	143.48
Pioneer Warehouses, Rent.....	46.80
Towels	7.10
Water	5.92
Miscellaneous	10.53

\$972.28

Defendants' Exhibit No. 3—(Continued)

I don't believe it is worth while to withhold payment of these bills as the amount is only \$972. However, I should like to have your advice.

If paid, it will leave balance in Chase of \$2,500.60.

M. J. CURRY.

[Marginal Note]: O.K.—T.M.S.

[Endorsed]: Filed Feb. 4, 1949.

DEFENDANT'S EXHIBIT 4A

Memorandum

New York, January 11, 1941

Mr. Schumacher:

In re subject attached letter from Col. Coulson:

As you know, this question has been in our minds for a long time and, at meeting of the Board several months ago, I mentioned it to Mr. Olyphant of the Central Hanover, and handed him a statement (copy attached) showing allocation of new securities, under the approved ICC reorganization plans for the Western Pacific and the D&RGW, in lieu of securities now pledged under loan with his bank, which he said he would be glad to study and, later on, discuss the matter of possible release of the \$11,248 pledged cash. I pointed out to him that the Corporation had been carrying on, during the past few years, through borrowing funds from The Western Realty Company (wholly-owned subsid-

iary), the entire stock of which is pledged under loan with the Curtiss Southwestern Company—the latter company having consented to such borrowing in each instance; that it seemed to me the Central Hanover loan was in far better shape collaterally than those with the Chase Bank and the Curtiss Southwestern Company and I felt that under all the circumstances the Central Hanover could very well release the cash to the Corporation, to enable it to meet its current operating expenses.

I have heard nothing further from him, neither have I broached the subject since, my thought being that at the first meeting of our Board I would again take it up with him.

In view of Mr. Coulson's suggestion, however, perhaps we should take it up formally, by letter. Will discuss this with you at your convenience.

/s/ M. J. C.

[Marginal Note]: Discussed 1/13/41.

[Stamped]: T.M.S. Jan. 13, 1941.

[Endorsed]: Filed Feb. 4, 1949.

DEFENDANTS' EXHIBIT No. 4B

January 14, 1941.

Mr. Robert E. Coulson
40 Wall Street
New York, N. Y.

Dear Mr. Coulson:

I have your letter of the 10th instant, suggesting some investigation be made of the status of the cash which this Corporation has on deposit in the Central Hanover Bank, pledged to secure, in part, our loan, before further advance from the Western Realty Company to the Corporation is made.

The principal of the demand note of this Corporation held by the Central Hanover Bank & Trust Company, dated May 25, 1932, is \$635,000. Interest rate was originally 5%; however, as of February 1, 1935, the rate was reduced to 4½%. This was brought about through conference our Treasurer, Mr. Curry, had with Mr. Olyphant, Vice President of Central Hanover, and in accordance with resolution adopted at meeting of Board of Directors on January 10, 1935, which resolution was as follows:

“Resolved, that the Directors of the Corporation are of the opinion that it is for the best interest of the Corporation to have \$40,000 of said deposit of \$51,248.86 applied by the Central Hanover Bank and Trust Company in part-payment of said loan of \$675,000 and the officers are directed to use their best efforts to induce said bank to make application of said amount and to also endeavor to secure a

reduction of 1% in the present rate of 5% for said loan."

Our records indicate that at the aforementioned conference Mr. Olyphant inquired if we had approached our other two creditors (Chase Bank and Curtiss Southwestern) with like request, and statement was made that we had not, for the reason that their loans were not as well collaterated as the Central Hanover loan and that therefore a reduction from the 5% rate would seem to be fair and reasonable.

The question you raise has been in our minds for a long time and, at a meeting of the Board, several months ago, Mr. Curry mentioned it to Mr. Olyphant and handed him a statement (copy attached, revised to December 31, 1940), showing allocation of new securities under the approved ICC reorganization plans for the Western Pacific and the D&RGW in lieu of securities now pledged with Central Hanover. Mr. Olyphant stated he would be very glad to study it and, later on, discuss with us the matter of possible release of the \$11,248 pledged cash. It was pointed out to him that the Corporation had been carrying on, during the past several years, through borrowing funds from the Western Realty Company, the entire stock of which is pledged under loan with Curtiss Southwestern Company—that company having consented to such borrowing in each instance; that it seemed to us the Central Hanover loan was in much better shape collaterally than those of the other two creditors and

we felt, under all the circumstances, the Central Hanover should be willing to release the cash to the Corporation to help meet current operating expenses.

However, the question has not been pursued further for the reason we have felt the Central Hanover had a right to hold this cash as part collateral under the loan, which has been in default since January, 1934. Aside from this, it is my judgment it is not opportune at this time to take this up with Central Hanover, as I feel they would turn it down, and I prefer to allow it to remain "as is" until actual necessity arises, when the Western Realty Company's cash resources may not be sufficient to permit of further loans to the Corporation.

Yours very truly,

/s/ T. M. SCHUMACHER.

bcc. Mr. F. C. Nicodemus, Jr.

[Endorsed]: Feb. 4, 1949.

DEFENDANTS' EXHIBIT No. 4C

(For Identification Only)

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York

August 7, 1941

Mr. T. M. Schumacher,
The Western Pacific Railroad Corporation,
37 Wall Street,
New York, N. Y.

Dear Mr. Schumacher:

Since 1936 there has been advanced to The Western Pacific Railroad Corporation something over \$200,000 by the Western Realty Company. The stock of the Western Realty Company is all held by Curtiss Southwestern Company as collateral for an under-collateralized loan which is in default. The advances have been made possible by formal consents given by the Curtiss Southwestern Company to such advances. During the lifetime of Mr. James these advances represented no problem in view of the ownership of the Curtiss Southwestern Company. Today all the stock in Curtiss Southwestern Company is held by the executors under the wills of Mr. James and of Mrs. James.

We have given consideration to the question whether we could properly advise the executors to consent to the continuance of such advances. We find no basis upon which we may properly give such advice.

As you know, Curtiss Southwestern Company is one of three secured creditors of The Western Pacific Railroad Corporation, the other two being The Chase National Bank of the City of New York and the Central Hanover Trust Company. It is possible that some plan could be worked out for cooperation between the three secured creditors in providing The Western Pacific Railroad Corporation with needed funds on the basis of which some favorable recommendation might be made to the executors of the James' estates. We suggest that you get in touch with the other secured creditors as promptly as you can and obtain their views as to the situation.

Sincerely yours,

/s/ ROBERT E. COULSON.

[Stamped]: T.M.S. Aug. 13, 1941.

[Stamped]: The Western Pacific Railroad Corporation—Received Aug. 11, 1941.

DEFENDANT'S EXHIBIT No. 5A

May 20, 1943.

Messrs. Pierce & Greer
40 Wall Street
New York, N. Y.

Att. Mr. H. Brua Campbell

Dear Mr. Campbell:

The enclosed copies of letters from Tri-Continental Corporation, this city, explain themselves.

Will you please advise as to nature of reply that should be made.

In this connection, I refer you to your letter dated May 21, 1942, to Lybrand, Ross Bros. & Montgomery (copy to me) having reference to question of whether this Corporation is subject to New York State franchise tax. The opinion expressed therein, it seems to me, may also serve as an answer to the inquiry from Tri-Continental.

Yours very truly,

/s/ M. J. CURRY.

[Marginal Note]: Mr. Campbell suggested we make reply stating that the corp. does not file N. Y. State Franchise Tax.

/s/ M. J. C.

5/24/43.

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 5B

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York

May 18, 1944

Mr. M. J. Curry, Vice President,
Western Pacific Railroad Company,
37 Wall Street,
New York, N. Y.

Dear Sir:

You have inquired as to the possible liability of The Western Pacific Railroad Corporation for future franchise taxes in the State of New York in view of the prospective changes to be occasioned by the reorganization of The Western Pacific Railroad Company and the transfer of the capital stock of the Railroad Company to the Reorganization Committee.

We understand that you have heretofore been advised by counsel that your corporation was not subject to any State franchise taxes under then existing laws and decisions, in the light of its activities in New York State.

However, since such advice was given, the New York State franchise tax laws have been substantially changed by enactments at the 1944 Session of the Legislature, and, in particular, by Chapter 415 of the Laws of 1944, effective March 31, 1944.

From the present point of view of The Western Pacific Railroad Corporation, the most significant

Defendants' Exhibit No. 5B—(Continued)

change effected by Chapter 415 of the Laws of 1944 is a new definition of "doing business" in New York State, for purposes of franchise taxation. Prior to the enactment of Chapter 415 of the Laws of 1944, the provision under which The Western Pacific Railroad Corporation was deemed not to be doing business in the State for franchise tax purposes (Subdivision 6, Section 188, Tax Law) read as follows:

"The holding of real property in this state by a foreign corporation shall be deemed to be doing business in this state within the meaning of this article, but a foreign corporation shall not be deemed to be doing business in this state, for the purposes of this article, solely by reason of (a) having office furniture and fixtures in this state, or (b) the maintenance of cash balances with banks or trust companies in this state, or (c) the ownership of shares of stock or securities kept in this state, if pledged as collateral security, or, if deposited with one or more banks or trust companies, or with brokers, who are members of a recognized security exchange, in safekeeping or custody accounts, or (d) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (e) any combination of the foregoing activities."

The provision in the new franchise tax laws (Tax Law, Section 209 (4)) which replaces Section 188,

Defendants' Exhibit No. 5B—(Continued)
subdivision 6, reenacts substantially the above-quoted provision except that the words which we have underscored above were omitted in the new enactment. The omission of clause (a) “having office furniture and fixtures in this state” was undoubtedly intended to bring under the provisions of the New York statute all foreign corporations maintaining offices of their own in the State of New York, and we would anticipate that the maintenance of an office by The Western Pacific Railroad Corporation in the State of New York, after the effective date of the new statute for such purposes, would subject the Corporation to New York State franchise taxes.

Although the new law was effective as of March 31, 1944, under its provisions a company, theretofore deemed not to be doing business in New York State under the prior law, but deemed to be doing business in New York State under the provisions of the new law, would not incur liability for tax prior to the tax period commencing November 1, 1944. The President of the Tax Commission stated the position of the Tax Commission as follows: (Paragraph 13,028-B, Prentice-Hall, State and Local Tax Service):

“ * * * For example, a corporation on the calendar year basis which would be deemed to have commenced doing business in the state on the effective date of the new law would not incur liability for tax under the new law un-

Defendants' Exhibit No. 5B—(Continued)

less it continued doing business in the state
after October 31, 1944 * * *"

It is our opinion that, if The Western Pacific Railroad Corporation continues to maintain an office in New York State and continues its business activities as heretofore, after October 31, 1944, it will thereby subject itself to the provisions of the New York State franchise tax laws.

If you have any other questions in connection with these problems, we should be glad to advise you.

Very truly yours,

WHITMAN, RANSOM,
COULSON & GOETZ.

[Stamped]: Received May 23, 1944, Western Pacific Railroad Co.

May 23, 1944.

Mr. F. C. Nicodemus, Jr.
Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Dear Mr. Nicodemus:

Herewith is copy of letter dated May 18th, from Messrs. Whitman, Ransom, Coulson & Goetz, Tax Counsel of the Railroad Company, which is self-explanatory.

As we are anxious to avoid payment of the tax

Defendants' Exhibit No. 5B—(Continued)
in question, which will begin to accrue as of November 1, 1944, it will be appreciated if you will advise what, if anything should be done to accomplish this result, or, in any event, to enable us to pay a minimum tax.

Yours very truly,

/s/ M. J. CURRY.

[Marginal Note]: MVC to note /s/ M. J. C.
Noted /s/ M. C. V.

Pierce & Greer
40 Wall Street
New York 5, N. Y.

June 14, 1944.

Mr. M. J. Curry, President
The Western Pacific Railroad Corporation
37 Wall Street
New York 5, N. Y.

Dear Mr. Curry:

This will serve as a tardy acknowledgment of your letter to me of May 23, 1944, enclosing opinion from Messrs. Whitman, Ransom, Coulson & Goetz, in respect of the recently enacted New York State franchise tax.

I understand that this tax liability does not begin to accrue until November 1, 1944, by which time we

Defendants' Exhibit No. 5B—(Continued)
are hopeful of disposing of our controversy with
Mr. Buckland. In any event I think it will be
necessary to make this payment in order to enable
The Western Pacific Railroad Corporation to function
at least through the present calendar year.

Yours very truly,

/s/ F. C. NICODEMUS, JR.

[Stamped]: Received June 15, 1944, Western
Pacific Railroad Co.

October 5, 1944.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

Referring to our exchange of letters in May and
June, last, in re. New York State Franchise tax:

As this tax will begin to accrue as of November
1, 1944, and the first report is due May 15, 1945,
and the tax shown by such report is payable one-
half at time of filing report and one-half on or
before the succeeding November 15th, I am again
calling it to your attention with request for advice
as to what can be done to avoid payment, in view
of conditions surrounding the Corporation at this
time.

Defendants' Exhibit No. 5B—(Continued)

Do you feel it would be desirable to address a letter to Mr. Rollin Browne, State Tax Commissioner, at Albany, stating the facts, and request a waiver of the obligation under the new law in behalf of the Corporation? If you do, will you please let me have draft of such a letter.

Yours very truly,

/s/ M. J. CURRY.

[Marginal Notes]: President, State Tax Commission.—MCV to note and return /s/ M. J. C.
Noted.

Pierce & Greer
40 Wall Street
New York 5, N. Y.

October 11, 1944.

Mr. M. J. Curry, President
The Western Pacific Railroad Corporation
37 Wall Street
New York 5, N. Y.

Dear Mr. Curry:

Mr. Nicodemus asked me to reply to your letter of October 5, 1944, with reference to the applicability to the Corporation of the franchise tax on business corporations imposed by Article 9-A of the

Defendants' Exhibit No. 5B—(Continued)
New York Tax Law, as amended by Chapter 415
of the Laws of 1944, effective March 31, 1944.

Inasmuch as the tax thereby imposed does not
begin to accrue until November 1, 1944, and the
first return required to be made by the Corporation
will not be due until May 15, 1945, it is our thought
that it would not be profitable to do anything in the
matter until shortly before the date for the filing of
the return, at which time the Corporation will be in
a position to deal with the matter in the light of
such developments as may hereafter occur.

Yours very truly,

/s/ H. BRUA CAMPBELL.

[Marginal Note]: Noted M. C. V.

[Stamped]: M. J. O. Oct. 13, 1944.

[Stamped]: Received Oct. 31, 1944, Western Pa-
cific Railroad Company.

March 26, 1945.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

Referring to enclosed copy of letter dated March
23, 1945, from Tri-Continental Corporation, this
city, on subject New York State Franchise Tax:

1870 *Western Pacific R.R. Corp., et al., vs.*

Defendants' Exhibit No. 5B—(Continued)

See your letters to me under dates June 14, 1944, and October 11, 1944, and let me know, please, what I should say in answer to their inquiry.

Yours very truly,

/s/ M. J. CURRY.

[Marginal Notes]: M. C. V. to note and return
/s/ M. J. C.

Noted /s/ M. C. V.

Tri-Continental Corporation
65 Broadway
New York

March 23, 1945

Western Pacific R. R. Corp.
37 Wall St.
New York 5, N. Y.

Dear Sirs:

During the year 1944 the undersigned or certain of its associated companies were the beneficial owners of securities of your corporation. In the preparation of our New York State Franchise Tax report we are required to apportion the value of such securities in accordance with the percentage of the entire capital or the issued capital stock of your corporation allocable to New York State as determined on your New York tax report for the preceding tax year.

Defendants' Exhibit No. 5B—(Continued)

Accordingly, we should appreciate your advising us of the percentage, if any, of the entire capital or the issued capital stock of your corporation allocated to New York State on the New York State Franchise Tax report, if any, filed by your corporation during the year 1944. It will answer our purpose, if you merely fill in such information at the bottom of this letter, or indicate that you do not file New York State Franchise Tax reports.

We shall appreciate an early reply.

Very truly yours,

TRI-CONTINENTAL
CORPORATION,

/s/ WILLIAM RENNER,
Treasurer.

Percentage of entire capital or issued capital stock allocated to New York State on New York State Franchise Tax report filed during the year 1944.

.....%.

.....

Signed.

[Stamped]: Received March 26, 1945, Western Pacific Railroad Co.

Defendants' Exhibit No. 5B—(Continued)

Pierce & Greer
40 Wall Street
New York 5, N. Y.

April 9, 1945

Mr. M. J. Curry, President
The Western Pacific Railroad Corporation
37 Wall Street
New York 5, N. Y.

Dear Mr. Curry:

This refers to your letter of March 23, 1943, enclosing copy of letter from the Tri-Continental Corporation requesting advice as to the percentage of capital stock of The Western Pacific Railroad Corporation allocable to New York State.

My suggestion is that you call Mr. James K. Polk and ascertain whether any of the James Corporations are concerned with the same request that has been made by the Tri-Continental Corporation and be guided by his recommendation as to the answer to be made pursuant to this inquiry.

Yours very truly,

/s/ F. C. NICODEMUS, JR.

[Stamped]: Received April 10, 1945, Western Pacific Railroad Co.

Defendants' Exhibit No. 5B—(Continued)

April 10, 1945

Mr. James K. Polk

Messrs. Whitman, Ransom, Coulson & Goetz

40 Wall Street

New York 5, N. Y.

Dear Mr. Polk:

Enclosed is copy of letter dated March 23, 1945, from Tri-Continental Corporation, this city, on subject of New York State Franchise tax.

I referred this to Mr. Nicodemus, of Counsel for this corporation, for advice as to nature of reply to be made and he suggests I ascertain from you whether any of the James corporations are concerned with the same request that has been made by the Tri-Continental, and advise me, if you will, please, as to answer to be made to the inquiry.

Yours very truly,

/s/ M. J. CURRY.

April 11, 1945.

Tri-Continental Corporation

65 Broadway

New York 6, N. Y.

Attention Mr. William Renner, Treasurer.

Gentlemen:

In response to your letter of March 23rd, this is to advise that the Western Pacific Railroad Cor-

Defendants' Exhibit No. 5B—(Continued)
poration did not file a New York State franchise
tax report during the year 1944.

Yours very truly,

/s/ M. J. CURRY.

bcc. Mr. F. C. Nicodemus, Jr.

See your letter of April 9th. The above letter
was written on suggestion made by Mr. Polk
over the 'phone today.

M. J. C.

April 23, 1945.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

I refer you to my letter dated October 5, 1944,
your reply dated October 11, 1944, in regard to the
franchise tax imposed by Article 9-A of the
amended New York Tax law:

As the first return required to be made will be
due May 15, 1945, which date is rapidly approach-
ing, I would appreciate your prompt advice as to
what should be done in the matter so far as the
corporation is concerned.

Mr. Polk, of the firm of Whitman, Ransom, Coul-

Defendants' Exhibit No. 5B—(Continued)

son & Goetz, I understand, has had this question under consideration and I suggest you consult him in the matter.

Yours very truly,

/s/ M. J. CURRY.

cc. Mr. James K. Polk

Whitman, Ranson, Coulson & Goetz.

April 26, 1945.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

Referring to my letter to you of April 23rd, in regard to New York State Franchise Tax:

For your information, I quote below item which appeared in this morning's edition of the New York Times:

“Tax Deadline Is Extended

Put Off by State From May 15 to June
15 on Corporate Returns

Albany, April 25 (AP)—The State Tax Commission today extended from May 15 to June 15 the deadline for filing 1944 corporation franchise tax returns.

Defendants' Exhibit No. 5B—(Continued)

The extension affects corporations and those whose fiscal years ended in July, August, September, October or November, 1944, or in January or February, 1945.

Commissioner Rollin Browne said the extra month was granted to permit taxpayers to follow newly adopted regulations, now being printed."

Yours very truly,

/s/ M. J. CURRY.

cc. Mr. James K. Polk.

Whitman, Ransom, Coulson & Goetz.

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 5-C

Moody's Investors Service
65 Broadway, New York

January 8, 1943

Mr. T. M. Schumacher, Trustee,
Western Pacific Railroad Co.,
37 Wall Street,
New York City, N. Y.

Dear Sir:

In analytical work dealing with railroad securities the federal income tax liability (past, present and future) and the correct method of computation

Defendants' Exhibit No. 5-C—(Continued)

based on accurate knowledge of the various basic factors is today more important than ever. We in our work here at Moody's have naturally had to make estimates, but sometimes, due to inadequate knowledge of the facts, our tax conclusions have not been as accurate as we would wish.

We wonder whether you would be willing to be of help to us regarding the above and, on the possibility that you would, we are enclosing a tax form a return of which filled out (even on a tentative basis) would be of great assistance.

We should be glad to hold any information furnished us in confidence, if you so desire.

Yours very truly,

MOODY'S INVESTORS
SERVICE

/s/ WALTER F. HAHN,

Manager-

Railroad Department.

WFH:FD

Enclosure

[Initialed]: MJC & MCV

[Stamped] Received Jan. 9, 1943, W. P. R. R. Co.

[Stamped]: T.M.S. Jan. 11, 1943.

Defendants' Exhibit No. 5-C—(Continued)

Estimate of Excess Profits Tax For 1942

Preferred Stock
Common Stock
Premium on Stock
One half of Debt
Corporate Surplus
Other items of invested capital (explain)
Total Invested Capital
Inadmissible Assets (1)
Total Assets (2)
Ratio of (1) to (2).
Invested Capital Less Inadmissibles
8% on First 5 Million
7% on Second 5 Million
6% on Next 190 Million
5% on Balance
Excess Profits Tax Credit
Pre-Tax Net Income—1942
Less Net Operating Loss Carryover
Less Net from Inadmissibles
Balance
Plus One-Half Interest Charges
Total
Excess Profits Tax Credit plus Carryover
Excess Profits
Excess Profits Tax (90%)

Estimate of Normal Tax and Surtax For 1942

Pre-Tax Net Income—1942
Less Excess Profits

Defendants' Exhibit No. 5-C—(Continued)

Less Net Operating Loss Carryover
Balance
Add Back income from Inadmissables
subject to Normal & Surtax
Total
Normal & Surtax (40%)
Total Normal & Surtax
Pre-Tax Net Income
Less Total Tax
Net Income

Estimate of Unused Excess Profits Credit

	1941	1940
Federal Income Tax Accrual		
Pre-Tax Net Income Indicated		
(1941 tax rate 31%; 1940 tax rate 24%)		
Net Operating Loss Carryover from 1939		
Net Operating Loss Carryover from 1939 & 1940		
Adjusted Net Income		
Plus One-half of Interest Charges		
Total		
Less Net from Inadmissables		
Balance (1)		
8% of First 5 Million of Invested		
Capital Less Inadmissible Assets		
7% of Balance of Such Assets		
Total Excess Profits Credit		
Balance (1)		
Excess Profits Credit Carryover		

Defendants' Exhibit No. 5-C—(Continued)

January 13, 1943.

Mr. Walter F. Hahn, Manager,
 Railroad Department,
 Moody's Investors Service,
 65 Broadway,
 New York, N. Y.

Dear Sir:

Your letter of January 8, addressed to Mr. T. M. Schumacher, Trustee, has been turned over to the undersigned for reply.

As The Western Pacific Railroad Company is included in the consolidated income and excess profits tax returns filed by The Western Pacific Railroad Corporation (parent company), we show below estimated consolidated figures, of which the Company's Pre-Tax Net Income is \$10,290,278:

Pre-Tax Net Income	\$9,501,492
Less Net Operating Loss Carry-over	1,217,213
	<hr/>
	\$8,284,279
Add Eliminations	1,575,727
	<hr/>
	\$9,860,006
Normal & Surtax (42%)	\$4,141,202
Western Pacific Railroad Company's apportionment of tax	\$4,078,794
Less accrued 1941	384,800
	<hr/>
Accrued in 1942—Estimated	\$3,693,994

Defendants' Exhibit No. 5-C—(Continued)

No provision has been made for accrual of excess profits tax since it appears whatever excess profits net income there may be will be more than offset by the excess profits credit and the unused profits credit carryover.

It will be appreciated if you will treat the above information confidentially.

Yours very truly,

/s/ M. J. CURRY.

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 6

The Western Pacific Railroad Company

Western Union Telegram Form

New York, March 2, 1943

D. C. DeGraff

Western Pacific Railroad Company

526 Mission Street

San Francisco, Calif.

Wire date: At conference with accountants here yesterday decided file consolidated tax returns including subsidiaries you list. In view this, we filed yesterday request for extension time to May 15th. Am hopeful will be granted and will advise you promptly. Glad you are preparing necessary working schedules and tentative declared value excess profits tax returns and expect forward latter part

this week. Our understanding regarding consents not in accord with yours. See Paragraph eye, Page Two, of instructions for Form 1120, which in our opinion requires such consents. This has been confirmed with Revenue Agent* here who states forms of consents have been printed and are available for 1942 returns. Procedure same as last year.

M. J. CURRY.

*Mr. Scanlon Ext 252

[Initialed]: MCV ok MJC

[Stamped]: M.J.C Mar. 3, 1943.

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 7

March 15, 1943.

Collector of Internal Revenue,
Second District of New York,
Custom House,
New York, N. Y.

Dear Sir:

Enclosed herewith is Tentative Consolidated Income and Declared Value Excess-Profits Tax Return (Form 1120) of The Western Pacific Railroad Corporation for the year ended December 31st, 1942.

The estimated tax on this return is \$4,209,948. and we hand you herewith New York draft No. MT 56492 in favor of United States Collector of

Western Pacific R.R. Company, etc. 1883

Internal Revenue, New York, in the amount of \$1,052,487. covering first installment of one-fourth of the estimated tax.

Yours very truly,

/s/ M. J. CURRY,
Treasurer.

Enclosures

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 8

The Western Pacific Railroad Company

Western Union

Telegram Form

New York, May 7, 1943.

D. C. DeGraff

Western Pacific Railroad Company

526 Mission Street

San Francisco, Calif.

Reference question income and excess profits tax returns 1942: Tax lawyers have decided we should file consolidated returns, which will do on or before May 15th. Would appreciate if you will have final declared value returns prepared and executed for all subsidiaries similar to tentative returns filed in March and forward here original and two copies each. Figures on tentative returns should be corrected as follows: Show Sacramento Northern in-

1884 *Western Pacific R.R. Corp., et al., vs.*

terest \$1313.00; Net operating loss deduction \$710,-
783.55 making deficit \$391,755.08. Standard Realty
Net Operating Loss Deduction \$4407.51; Deficit
\$3,908.20.

M. J. CURRY.

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 9

The Western Pacific Railroad Company
37 Wall Street
New York

May 21, 1943.

Mr. F. C. Nicodemus
40 Wall Street
New York, N. Y.

Dear Mr. Nicodemus:

Enclosed is copy of Mr. Polk's letter of May 20,
1943, in re. tax matters. Very interesting!

I suggest it might be well for you to drop over
Monday morning, the 24th, and discuss with Mr.
Schumacher, who will leave that afternoon for
San Francisco.

Yours very truly.

/s/ M. J. CURRY.

Defendants' Exhibit No. 9—(Continued)

Copy

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York

May 20, 1943.

Mr. M. J. Curry,
Vice President,
Western Pacific Railroad Company
37 Wall Street,
New York, N. Y.

Dear Mr. Curry:

On May 15, there were filed at the Office of the Collector of Internal Revenue, Custom House, New York, the Federal income, excess profits tax and declared value excess profits tax returns for the Western Pacific Railroad Company and its affiliated corporations. The items entering into the preparation of these returns were reviewed by us and on the basis of the information available, it is believed that the returns as filed met all of the conditions of the Internal Revenue Code and Bureau regulations in respect of the substantive matter contained therein and of supporting schedules.

It is believed, however, that a considerable amount of supporting detail and underlying data must be prepared in order that the figures set forth in the return can be supported upon subsequent Bureau audit. While it is true that much of this underlying detail will relate to the earnings

Defendants' Exhibit No. 9—(Continued)
and profits determination which, in turn, will probably have little effect upon invested capital, it is believed, however, desirable that the research be carried through in order that the position we assert in the returns may be hedged against the adverse implications of possible distributions out of capital which may have occurred up to the date of the last dividend payment in 1927. Further, we have used in the returns, book costs as bases for the affiliated corporation's stock investments which again may require adjustments, possible of determination only after such analyses.

It is also believed desirable to have a more complete review made of the computation of the unused excess profits credit adjustment. In the return as filed, it was assumed that the invested capital base for the years 1940 and 1941 was substantially the same as for the taxable year 1942. Undoubtedly, changes will be indicated when the schedules for borrowed invested capital and inadmissible adjustments for 1940 and 1941 have been prepared in detail. This adjustment will, in all probability, have no effect upon the 1942 tax return but will afford a more proper basis for administrative consideration of tax matters for 1943 and subsequent years.

It is further noted that a historical development of the profit and loss accounts of the several companies, not only as disclosed in their books, but as set forth in the reconciliations reported in prior Federal income tax returns, will bring to light any

Defendants' Exhibit No. 9—(Continued)

instances of write-ups, write-downs, etc. The survey of this character will also serve to establish more definite amounts of net operating loss deductions and carry overs.

Both in connection with the review of the deductions claimed for depreciation and the amounts shown for fixed capital investment returns, it will be helpful to review the significant tax positions adopted by the company and accepted by the Bureau of Internal Revenue in connection with the audits by the Bureau of Internal Revenue of prior year income tax returns. While not estopped by prior considerations and decisions, the Bureau may be disinclined to depart from previous determinations of basis of fixed capital investments as shown by treatment in computing depreciation deductions and in computing gains and losses upon the disposition of assets.

It may also be noted that it is clearly demonstrable that the consolidated return basis of reporting for the year 1942 as contrasted with a separate basis of reporting, was advantageous to the group. Since consolidated returns were filed for 1940 and 1941, any unused excess profits credit inhered in the common parent corporation, had separate returns been filed for 1942. A preliminary survey of the smaller affiliates indicates that they would have incurred no excess profits tax liability. The operating company, however, if placed on a separate basis without the benefit of the credit carryovers, would

Defendants' Exhibit No. 9—(Continued)

have been liable for a net excess profits tax liability of \$3,650,000 even if all other figures as shown in the return were left unchanged. This amount is offset by several factors. In the first place, on an individual basis, the operating companies' interest on expense deductions would have increased \$703,000. It would have lost, however, its allocable share of the net operating loss reduction of approximately \$438,000. Further, a portion of its earnings subject to excess profits tax rates would have been eliminated from normal tax rates. There would have been in addition, a reduction in the surtax rate on a separate basis of the 2% penalty for filing a consolidated return, which would have amounted to approximately \$200,000 in tax. All of these factors combine to establish a net tax advantage of in excess of \$1,550,000 in the adoption of the consolidated return under the separate return.

There is a further possibility of adjustment under the Internal Revenue Code provisions contained in Sections 23 (g) (4) and (k) (5) by which the worthlessness of the operating company's stock may produce a net loss for the year 1943 with possible carryback application. This is commented upon rather than suggested as of certain value, since it is paradoxical to compute a loss upon the operating company's stock which, through the mechanics of consolidated return reporting, could be used to nullify the very income of the affiliate whose stock

Defendants' Exhibit No. 9—(Continued)

had become worthless. This matter will receive more careful consideration when the completion of the reorganization makes possible the assertion of the claim for worthlessness of the operating company's stock.

Apart from the 1942 tax liability, we are informed that a request has been addressed to the company for the submission of basic data to be considered by the Bureau of Internal Revenue in connection with the application made under date of March 29, 1943 for permission to change the method of accounting from retirement to a depreciation basis for Federal income tax purposes. Under general procedures adopted in the Bureau, the permission to change the basis of accounting is premised upon the agreement of the applicant to adoption of accumulated depreciation reserve balances which, at the election of the company, may be determined by any one of the following methods:

1. The accounts may be reconstructed from their beginning, or may start with the I.C.C. valuation, setting up as a reserve the difference between cost of reproduction new and cost of reproduction less accrued depreciation as determined at the valuation date. From either starting point, the capital accounts shall be carried forward, increased by additions and decreased by retirements, except that any increase in replacement costs, or additions or betterments expensed, which have been deducted for income tax purposes, may not be restored. Deprecia-

Defendants' Exhibit No. 9—(Continued)

tion at rates to be agreed upon shall be computed for all years and accrued into a depreciation reserve. From this reserve shall be deducted the cost of normal retirements, but for retirements due to casualty or special obsolescence, which would have been allowable under depreciation accounting, only the accrued depreciation thereon shall be deducted.

2. A reserve may be set up by multiplying the expired life of individual structures, or the weighted average ages of the accounts representing groups of assets, now in service, by the depreciation rates agreed upon for these assets.

3. A reserve of 30% of the total depreciable accounts at the date of change may be set up. It is to be understood that this is an overall reserve and the total amount so computed is to be allocated to the different depreciable accounts on a reasonable basis, such allocation to be a matter of agreement between each railroad and the Bureau.

We are familiar with the requirements of the Bureau of Internal Revenue in connection with depreciation computations generally embodied in the Valuation Division questionnaire, the provisions of T.D. 4422 and related Bureau rulings, and have discussed the railroad situation with the Bureau of Internal Revenue officials to whom these matters are assigned. It will, undoubtedly, be necessary to complete preliminary computations under the elective methods prescribed, and to compare the possible annual benefits of depreciated accounting with the

Defendants' Exhibit No. 9—(Continued)

retirement basis heretofore followed, before administrative action can be taken to complete the application for permission to change accounting basis filed with the Bureau of Internal Revenue.

We will be glad to confer with your company officials in planning these preliminary surveys so, if possible, to minimize the work required and will be glad to make available to you the benefit of our experience in the assembly and presentation of data to the Bureau of Internal Revenue, if you elect to take advantage of the depreciation basis of tax accounting for 1943.

Very truly yours,

/s/ JAMES K. POLK.

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 10

March 9, 1944.

Mr. F. C. Nicodemus, Jr.

40 Wall St.

New York 5, N. Y.

Dear Mr. Nicodemus:

The attached copy of letter dated Feb. 4, 1944, from the office of the Attorney General, State of Delaware, is self-explanatory.

The 1941 Franchise tax which you will recall was reduced by the State Tax Board early last year as

a result of negotiations, will amount to \$1350.90 (\$1262.50 principal and \$88.40 penalty interest) on April 1, 1944. Payment should be made on or before that date if forfeiture of the Corporation's charter is to be avoided.

In view of conditions confronting the Corporation, filing of consolidated Federal income and excess profits tax returns, etc., I should like to have your advice as to whether payment of the 1941 tax should be made on or before April 1st.

Yours very truly,

/s/ M. J. CURRY.

[Marginal Note]: Mr. Campbell discussed this with Me and agreed we should request extension to July 1, 1944.

/s/ MJS

[Endorsed]: Filed Feb. 8, 1949.

DEFENDANTS' EXHIBIT No. 11

The Western Pacific Railroad Company
37 Wall Street
New York

April 1, 1943.

Via air mail

Mr. Sidney M. Ehrman,
Nevada Bank Building,
San Francisco, Calif.

Dear Mr. Ehrman:

Referring to our telephone conversation last evening:

This morning I have looked up our records to see just what the expense of making up the consolidated tax returns in our office and the tax savings effected has been since The Western Pacific Railroad Company went into trusteeship.

First of all, the certified public accountants, Lybrand, Ross Bros. & Montgomery, were employed by the "Corporation" from year to year to audit the accounts pursuant to provisions of the Securities and Exchange Act. Their charge for this audit has averaged approximately \$1,000 a year. For the past two years we have consulted them on excess profits tax on a consolidated basis and their charge for this was \$150 in 1940 and \$400 in 1941, which was paid by the Corporation.

This work has all been done in this office and consolidated tax returns have been prepared and filed under Mr. Curry's supervision. I might add

that during the years the Company has been in trusteeship, payment of income taxes for the consolidated group was nil because of the large consolidated deficits. In fact, the Tidewater Southern, which made a profit every year and was included in the returns, benefited by these deficits which effected a tax saving to it of approximately \$116,000 for the six year period. During that period expert advice from counsel was not necessary.

However, commencing with 1942, the situation has changed considerably because the affiliated companies' earnings have greatly increased. For this reason and in view of the new complicated tax law, we now require the advice of competent tax attorneys.

For your further information, I find that the last payment of consolidated income tax was made in 1929. At that time there was a net consolidated taxable income of \$365,000, on which the income tax amounted to \$40,230.

Yours very truly,

/s/ T. M. SCHUMACHER.

cc. Mr. Charles Elsey
Mr. Allan Matthew
Mr. F. C. Nicodemus, Jr.

[Endorsed]: Filed Feb. 10, 1949.

DEFENDANTS' EXHIBIT No 12

Filed March 3, 1944,
C. W. Calbreath, Clerk.

Allan P. Matthew,
1500 Balfour Building,
San Francisco 4, California

In the District Court of the United States, for the
Northern District of California, Southern Division.

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

ORDER AUTHORIZING ESTABLISHMENT
OF A RESERVE FUND FOR CONTINGENT TAX LIABILITIES

The petition filed February 21, 1944, by T. M. Schumacher and Sidney M. Ehrman, the Trustees of the properties of the Debtor above named, for authority to establish a reserve fund of \$7,100,000 for contingent tax liabilities, came on duly to be heard and was heard this day and thereupon submitted. Good cause appearing therefor, the Court, being fully advised, finds that notice of the hearing upon said petition has been given as prescribed by the order of this Court, that all of the averments of said petition are true, and that it is for the best interests of the estate of the Debtor that this order be made.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the Trustees are hereby authorized to establish, with funds in their hands belonging to the estate of the Debtor and derived from the earnings of the railroad of the Debtor during the year 1943, a reserve fund in the amount of \$7,100,000, to be designated as the "Reserve Fund for Contingent Tax Liabilities," to be invested in United States Treasury securities, and to be used for the payment of any Federal income and excess profits taxes which may be found due for the year 1943.

Dated: March 3, 1944.

A. F. ST. SURE,
Judge.

[Endorsed]: Filed Feb. 10, 1949.

Western Pacific R.R. Company, etc. 1897

DEFENDANTS' EXHIBIT No. 13

The Western Pacific Railroad Corporation
Office of the President
37 Wall Street

New York 5.
May 19, 1944.

Mr. James K. Polk
Whitman, Ransom, Coulson & Goetz
40 Wall Street
New York, 5, N. Y.

Dear Mr. Polk:

I will appreciate advice from you as to nature of
reply to be made to letter from Robert L. Whittaker
& Co., Philadelphia, of which enclosed is a copy.

Yours very truly,

/s/ M. J. CURRY

cc. Mr. F. C. Nicodemus, Jr.

1898 *Western Pacific R.R. Corp., et al., vs.*

(Copy)

Robert L. Whittaker & Co.

1420 Walnut Street

Philadelphia

May 17, 1944.

Western Pacific Railroad Corporation

37 Wall Street

New York, N. Y.

Gentlemen:

It has occurred to us as holder of Western Pacific 5s due 1946 that the large tax credit in the earnings statement for December 1943 of the Western Pacific could take place annually for some years to come, as long as the Revenue Act allows holding companies to consolidate their returns of subsidiaries for income tax purposes.

Since the ownership of the Western Pacific Railroad was declared valueless for 1943 we thought possibly this loss, which must involve upwards of \$50,000,000, could be used as a tax credit for future years until the total loss is used.

We would appreciate hearing from you regarding this situation.

Very truly yours,

/s/ ROBERT L. WHITTAKER
& CO.

RLW :es

[Endorsed]: Filed Feb. 10, 1949.

DEFENDANTS' EXHIBIT No. 14

September 12, 1944

Mr. Sidney M. Ehrman
Nevada Bank Building
San Francisco 4, California

My dear Mr. Ehrman:

From your letter to Mr. Schumacher which he was good enough to show me it seems evident that there is a lack of understanding in San Francisco of the nature and extent of the services rendered and being rendered by our firm as counsel for The Western Pacific Railroad Company.

These services are under employment by the Railroad Company continued by the Trustees.

They may be roughly placed in four general categories which I shall set out below in which seems to me to be the order of their importance.

First: Services rendered as counsel here for Mr. Schumacher, Trustee resident in New York, in respect of all matters of administration and operation with which he is specifically charged and as to which he requires day to day advice. These include his relations with the Association of American Railroads and with governmental authorities at Washington; negotiating, closing and renewing loans; attendance at meetings of member roads; and generally all matters for which he is jointly responsible as Trustee and wishes to consult and exchange views with counsel on the ground. My understanding is that he explained to Judge St. Sure at the outset

Defendants' Exhibit No. 14—(Continued)

the necessity of having such counsel and that Judge St. Sure acquiesced.

Second: Services rendered by New York counsel as a member of the Law Committee of the Association of American Railroads. The Law Committee is composed of selected counsel for the principal carriers and I have been a member for many years. Meetings are held alternately at New York and Chicago and ordinarily continue for two days. The docket rarely has less than twenty items, each of which is a problem of major importance to the railway industry. Through this source and through my membership in the Railway Conference which meets weekly in New York I have been in a position to keep Mr. Schumacher informed and keep myself informed as to what is going on in the railway industry that may affect our property. It would serve no useful purpose to review these various problems. They include, however, such matters as the dismemberment of the Pullman Company; the land grant problem; and the recent anti-trust suit in which you and Mr. Schumacher are named as defendants.

Third: Services rendered in the matter of Federal taxation. All tax returns for the Railroad Company and for the Trustees have been made from New York under advice of New York counsel. Owing to the heavily increased tax burden incident to the war economy, the complex Federal tax structure and the necessity of recurring conferences with the Commissioner of Internal Revenue and the

Defendants' Exhibit No. 14—(Continued)

Treasury, the firm of Whitman, Ransom, Coulson & Goetz on our advice were brought in a year or more ago as tax consultants. They are peculiarly well equipped to serve in that capacity. The responsibility of New York counsel for the Railroad Company has not, however, been limited to work under the existing tax laws but has required constant attention to proposed changes that might adversely affect our property. In the last Congress the so-called Johnson Bill was originally so drawn that it would deprive the Western Pacific of the invaluable carry-over and carry-back provisions of the present Act. Our firm prepared and submitted amendments to protect the situation which Senator Johnson accepted. At the present time legislation is in process of incubation which unless the interests of the Western Pacific are guarded may prove equally embarrassing.

Fourth: Services rendered currently on routine matters. Included in this category are (a) attention to litigation in New York on loss and damage claims in which the Western Pacific is a participating carrier; (b) the corporate work for subsidiaries; (c) problems arising under our commitments to the New York Stock Exchange; (d) reports to governmental authorities; (e) problems under corporate mortgages; (f) correspondence with security holders in relation to their personal tax problems; and (g) a variety of matters of minor importance too numerous to classify but nevertheless being often tedious and exacting.

Defendants' Exhibit No. 14—(Continued)

It is my best judgment that the allowance we are receiving currently from the trust estate is not even compensatory for the services rendered in the last category.

The question is not whether any part of our current allowance should be applied toward compensation as counsel for the Debtor in the reorganization proceedings—this would be inadmissible under the terms of the order of Court—but the real question is whether our firm should not in justice to ourselves apply at some future time for compensation for the services falling in categories First, Second and Third. As matters now stand these services have been rendered gratuitously.

It is less important, however, that our firm be justly compensated than it is that you and perhaps Judge St. Sure should have a broader understanding of what has been and is being done here in the interest of the Western Pacific property.

As Mr. Schumacher has advised you it is my purpose to attend the hearing which is set for September 25th. I cannot leave here earlier than September 21st but unless the Overland is late I expect to be on hand at the opening of the Court.

My best regards to you.

Yours very truly,

F. C. NICODEMUS, JR.

[Endorsed]: Filed Feb. 10, 1949.

DEFENDANTS' EXHIBIT No. 15

Heller, Ehrman, White & McAuliffe

Attorneys and Counselors at Law

Nevada Bank Building

San Francisco

(4)

September 14, 1944

Mr. F. C. Nicodemus, Jr.

Messrs. Pierce & Greer

40 Wall Street

New York 5, N. Y.

My dear Mr. Nicodemus:

I am in receipt of your letter of September 12th going into some detail in regard to the nature and extent of the services which are being rendered by you on behalf of The Western Pacific Railroad Company and its trustees. I wrote to Mr. Schumacher after you had filed your petition so that if both of us are called by the judge during the hearing on the subject of your compensation our testimony would be in harmony.

I have always been under the impression that the monthly compensation paid to your firm is the only compensation for which the trustees or the trust estate have incurred any liability. Your representation of the debtor company in the reorganization proceeding is, as I view it, a separate matter with which we as trustees are not concerned.

With kind regards,

Very truly yours,

/s/ SIDNEY M. EHRMAN

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANTS' EXHIBIT No. 17
(Identification only)

Henry Offerman

Schedule of Preferred Stock of Western Pacific Railroad Corporation Owned as at April 1, 1948, Showing Date of Purchase and Cost of Each Certificate

Certificates Held				Purchase Confirmations			No. of Shares	
Date	Cert. No.	No. Shares	Name	Trade Date Bought	Price Per Share	Total Cost (Including Commissions)	Broker	Total on Confirmation
7/14/42	D20730	100	Henry Offerman	7/ 7/42	5/8	66.50	Goodbody & Co.	100 100
8/26/42	D20764	100	Henry Offerman	8/13/42	5/8	66.50	Goodbody & Co.	100 100
2/ 8/43	D21282	100	Cohen, Simonson & Co.).....	(5/ 6/43	1/2	57.00	R. F. Gladwin & Co.	100) 800
2/ 8/43	D21281	100	Cohen, Simonson & Co.).....	(5/ 6/43	1/2	52.00	R. F. Gladwin & Co.	100)
4/19/43	D22282	100	Ruth Haiken).....					
4/19/43	D22283	100	Ruth Haiken).....					
4/19/43	D22284	100	Ruth Haiken).....	7/ 6/43	3/8	228.75	R. F. Gladwin & Co.	500)
4/19/43	D22286	100	Ruth Haiken).....					
4/19/43	D22287	100	Ruth Haiken).....					1,000
4/26/43	D22342	100	Maupe Remsberg	7/ 6/43	1/4	39.50	R. F. Gladwin & Co.	100)
3/25/43	D21834	100	Thomson & McKinnon	8/31/43	1/8	14.00	R. F. Gladwin & Co.	100 1,000
3/25/43	D21881	100	Mansell & Co.....	9/20/43	1/8	19.00	R. F. Gladwin & Co.	100 100
3/29/43	D21996	100	Thomson & McKinnon	11/ 5/43	1/8	13.50	Goodbody & Co.	100 100
3/29/43	D22000	100	Thomson & McKinnon	11/10/43	1/8	13.50	Goodbody & Co.	100 400
3/ 1/44	D22456	100	Henry Offerman).....					
3/ 1/44	D22457	100	Henry Offerman).....					
3/ 1/44	D22458	100	Henry Offerman).....	1/14/44	15c	32.00	R. F. Gladwin & Co.	200 260
3/ 1/44	D22459	100	Henry Offerman).....	2/ 2/44	1/4	34.25	R. F. Gladwin & Co.	103 103
3/ 1/44	D22460	100	Henry Offerman).....	2/ 3/44	1/4	66.50	R. F. Gladwin & Co.	200 200
3/ 1/44	D22461	100	Henry Offerman).....	2/ 4/44	1/4	116.00	R. F. Gladwin & Co.	400 400
3/ 1/44	D22462	100	Henry Offerman).....	2/ 5/44	1/4	88.50	R. F. Gladwin & Co.	300 300
3/ 1/44	D22463	100	Henry Offerman).....					
3/ 1/44	D22464	100	Henry Offerman).....					
3/ 1/44	D22465	100	Henry Offerman).....					
3/ 1/44	D22466	100	Henry Offerman).....					
3/ 1/44	D22467	100	Henry Offerman).....					
3/ 1/44	D042746	3	Henry Offerman).....					
3/ 9/44	D22610	100	Henry Offerman).....					
3/ 9/44	D22611	100	Henry Offerman).....					
3/ 9/44	D22612	100	Henry Offerman).....	2/29/44	1/2	216.00	Goodbody & Co.	400 400
3/ 9/44	D22613	100	Henry Offerman).....	3/ 1/44	1/2	54.00	Goodbody & Co.	100 100
3/ 9/44	D22614	100	Henry Offerman).....	3/ 1/44	1/2	54.00	Goodbody & Co.	100 100
3/ 9/44	D22615	100	Henry Offerman).....					
3/14/44	D22630	100	Henry Offerman).....					
3/14/44	D22631	100	Henry Offerman).....					
3/14/44	D22632	100	Henry Offerman).....	3/ 7/44	3/8	250.00	Kearns & Williams	500 700
3/14/44	D22633	100	Henry Offerman).....					
3/14/44	D22634	100	Henry Offerman).....					
4/ 25/44	D22825	100	Henry Offerman).....					
4/ 25/44	D22826	100	Henry Offerman).....	4/14/44	5/8	158.00	J. S. Farlee & Co., Inc.	200 200
Totals.....						<u>1,639.50</u>		<u>3,903 6,303</u>

(Identification only)

Western Pacific R.R. Company, etc.

1905

Henry Offerman

Summary Schedule of All Purchases and Sales of Western Pacific Railroad Corporation Preferred Stock

Trade Date	Broker	Purchases			Sales		
		No. of Shares	Price Per Share	Total Cost	No. of Shares	Price Per Share	Total Proceeds
7/ 7/42	Goodbody & Co.	100	$\frac{5}{8}$	\$ 66.50			
8/13/42	Goodbody & Co.	100	$\frac{5}{8}$	66.50			
5/ 6/43	Gladwin & Co.	400	$\frac{1}{2} +)$	525.00			
		400	$\frac{3}{8} +)$				
5/ 7/43	Gladwin & Co.	200	$\frac{3}{8} +$	91.50			
7/ 6/43	Gladwin & Co.	500	$\frac{1}{4} +)$	426.25			
		500	$\frac{3}{8} +)$				
8/31/43	Gladwin & Co.	1000	$\frac{1}{8}$	140.00			
9/20/43	Gladwin & Co.	100	$\frac{1}{8}$	19.00			
11/ 5/43	Goodbody & Co.	100	$\frac{1}{8}$	13.50			
11/10/43	Goodbody & Co.	400	$\frac{1}{8}$	54.00			
1/14/44	Gladwin & Co.	200	16c	32.00			
2/ 2/44	Gladwin & Co.	103	$\frac{1}{4} +$	34.25			

1906

Western Pacific R.R. Corp., et al., vs.

Trade Date	Broker	Purchases			Sales		
		No. of Shares	Price Per Share	Total Cost	No. of Shares	Price Per Share	Total Proceeds
2/ 3/44	Gladwin & Co.	200	1/4 +	66.50			
2/ 4/44	Gladwin & Co.	400	1/4 +	116.00			
2/ 5/44	Gladwin & Co.	300	1/4 +	88.50			
2/29/44	Goodbody & Co.	400	1/2	216.00			
3/ 1/44	Goodbody & Co.	100	1/2	54.00			
3/ 1/44	Goodbody & Co.	100	1/2	54.00			
3/ 7/44	Kearns & Williams	700	3/8 +	350.00			
3/18/44	Goodbody & Co.	100	5/8	66.50			
4/ 8/44	Goodbody & Co.				200	7/8	\$ 151.00
4/14/44	J. S. Farlee & Co.	200	5/8 +	158.00			
7/12/44	Gladwin & Co.				1400	7/8	1,064.00
3/26/45	Gladwin & Co.	300	1/2	156.75			
5/12/45	Goodbody & Co.				400	1 +	344.00
11/23/45	Goodbody & Co.				500	1 1/8	502.50
2/19/46	Goodbody & Co.				500	1 3/8	627.50
Totals.....		6903		\$2,794.75	3000		\$2,689.00

DEFENDANTS' EXHIBIT No. 19

(Identification only)

Cleta C. Offerman

Schedule of All Purchases and Sales of Western Pacific Railroad Corporation Preferred Stock

Date	Broker	Purchases			Sales		
		No. of Shares	Price Per Share	Total Cost	No. of Shares	Price Per Share	Total Proceeds
4/29/43	Goodbody & Co.	100	7/8	\$ 91.50			
4/30/43	Goodbody & Co.	900	7/8	823.50			
7/14/43	Goodbody & Co.	400	5/16	133.00			
4/22/44	Goodbody & Co.	400	5/8	266.00			
7/12/44	R. F. Gladwin & Co.				1600	7/8	\$1,216.00
2/18/46	Goodbody & Co.				200	11/8	201.00
	Totals.....	1800		\$1,314.00	1800		\$1,417.00

DEFENDANTS' EXHIBIT No. 20

Order No. 1

Entered 193

In the District Court of the United States for
the Northern District of California, Southern
Division

In proceedings for the reorganization of a
railroad. No. 1

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

ORDER

Upon due consideration of the petition of The Western Pacific Railroad Company, the above named debtor, verified August 2, 1935, and filed herein this day, stating that such debtor is unable to meets its debts as they mature and that it desires to effect a Plan of Reorganization in accordance with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and the Court being satisfied that such petition complies with said section and has been filed in good faith, it is ordered:

(1) That said petition be, and hereby is, approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

(2) That the debtor be, and it hereby is, authorized and directed, pending further order of the court

Defendants' Exhibit No. 20—(Continued)

in the premises, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the debtor, wherever situated, whether in this state, judicial circuit, or elsewhere and to manage and conduct its business as a railroad company, and to this end to exercise its authority and franchises and discharge all public duties obligatory upon it, and to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees; to collect and receive the incomes, rents, revenues, tolls, issues and profits of said property; to collect all outstanding accounts and all dividends and interest on securities belonging to it; to exercise such sale, conveyance, exchange and release rights as are reserved to, or available to, the debtor, under outstanding deeds of trust, mortgages, trust indentures and similar instruments, and to use the proceeds of sale of all released property as provided in such instruments; all in the same manner that it would be entitled and bound to do in its own right; and, to the extent necessary to protect and preserve the property of the debtor, to make and pay for additions and betterments to the railroads and property of the debtor; and to make such advances to its subsidiary corporations as are necessary to protect the debtor's interest therein, all in the same manner that it would be entitled and bound to do in its own right; and, to the extent necessary to protect and preserve the property of the debtor, to make and pay for

Defendants' Exhibit No. 20—(Continued)

ments with transit or storage privileges and other charges or adjustments of like character, between carriers in the conduct of their joint business, regardless of when accrued.

(d) Pending further order of this Court in the premises, the debtor hereby is authorized to pay pay checks, and like instruments issued to employees for services rendered to the debtor, whether before or during said six months' period, whenever the same are presented for payment.

(e) The cost of maintaining the corporate existence of the debtor, including the necessary expenses of the preservation of records, and the registration and transfer of its stocks and bonds, and trustees' charges under indenture under which securities of the debtor have been issued.

(f) All monthly payments due from time to time under any existing pension or insurance system of the debtor.

(g) The expense of printing pleadings, motions, petitions and orders now on file or hereafter filed in this case reasonably necessary to be printed, in such quality as shall provide copies for the use of the Court, the debtor, parties to the cause, and such others as may have a substantial interest therein; such expense to be taxed as costs in this case.

(4) That the debtor shall be allowed until January 1, 1936 (unless the time be extended further by order of this Court), within which to disaffirm any contracts. Such disaffirmance shall be indicated by

Defendants' Exhibit No. 20—(Continued)

notice to that effect, in writing, served on the other party or parties to such contract, and filed of record in this proceeding, and continued operation by the debtor under any of said contracts, within said period allowed for disaffirmances, shall not be deemed to conclude the debtor in respect of such election, or to constitute an election.

(5) That, pending further order of the Court in the premises, the debtor is authorized and empowered to institute or prosecute in any Court, or before any tribunal of competent jurisdiction, all such suits and proceedings as may be necessary, in its judgment, for the recovery or proper protection of its property or rights, and to make settlement of any thereof; and likewise to defend or liquidate, by written agreement or consent judgments, any actions, claims, proceedings, or suits, now pending against the debtor, or which may hereafter be asserted, or be brought in any Court, or before any officer, department, commission or tribunal, to which the debtor is, or shall be, a party, but no payments shall be made by the debtor in respect of any such claims accruing prior to the date of this order, in respect of any actions, proceedings, or suits, on such claims, without further order or direction of this Court except as may be provided in other paragraphs of this order and except such as may be permitted by other general orders hereafter entered herein, and such as constitute preferred claims under the Acts of Congress relating to bankruptcy; and no

Defendants' Exhibit No. 20—(Continued)
this order as to the Court may at any time seem
proper.

A. F. ST. SURE,
District Judge

Dated August 2, 1935.

Filed

[Endorsed] Filed Feb. 11, 1949.

DEFENDANTS' EXHIBIT No. 21

Warren Olney, Jr.,
Balfour Building,
San Francisco, California.

Pierce & Greer,
15 Broad Street,
New York City,
New York.

In the District Court of the United States for
the Northern District of California, Southern
Division

No. 26591-S

In the Matter of
THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

ORDER APPOINTING TRUSTEES

This cause coming on further to be heard this day
pursuant to subdivision (c) of amendatory Section

Defendants' Exhibit No. 21—(Continued)

77 of Chapter VIII of the Acts of Congress relating to bankruptcy and to the Order of this Court entered herein August 31, 1935;

And it appearing to the Court that debtor has given notice as directed in said Order entered August 31, 1935, to the mortgage trustees, creditors and stockholders and has caused publication thereof for such period and in such newspapers as said Order directs of a hearing to be held this day at ten o'clock in the forenoon, at which hearing, or any adjournment thereof, the Court shall appoint one or more trustees of debtor's property, as provided in said amendatory Section 77; and the following parties having appeared herein, or communicated to this Court recommendations with respect to the appointment of such trustees:

Crocker First National Bank of San Francisco and Samuel Armstrong, successor trustees, under indenture securing debtor's First Mortgage 5% Bonds;

The Chase National Bank of the City of New York, as trustee under indenture securing debtor's General and Refunding Mortgage Bonds;

A. C. James Co., holder of certain of debtor's secured promissory notes;

Reconstruction Finance Corporation, holder of certain of debtor's secured promissory notes;

The Railroad Credit Corporation, holder of certain of debtor's secured promissory notes;

Fidelity-Philadelphia Trust Co, Trustee, of equipment obligations to Baldwin Locomotive Works;

Defendants' Exhibit No. 21—(Continued)

The Chase National Bank of the City of New York, as Trustee under agreement dated March 1, 1923, covering Equipment Trust Certificates;

The Chase National Bank of the City of New York, as Trustee under agreement dated March 15, 1924, covering Equipment Trust Certificates;

The Chase National Bank of the City of New York, as Trustee under agreement dated May 1, 1929, covering Equipment Trust Certificates;

The Western Pacific Railroad Corporation, holder of debtor's obligation for advances on open account;

The Western Realty Company, holder of debtor's obligation for advances made on open account;

The Western Pacific Railroad Corporation, holder of debtor's Preferred Capital Stock;

The Western Pacific Railroad Corporation, holder of debtor's common stock;

And it appearing to the Court that the creditors and stockholders of the debtor represent that the appointment of trustees herein should not disturb the continuity of operations by the corporate organization of the debtor and should be at minimum cost to the debtor;

And it further appearing to the Court that under the by-laws of the debtor, T. M. Schumacher, as Chairman of the Executive Committee, is invested with general charge and supervision of and over the affairs and business of the debtor, and, subject to the control of the Board of Directors and Executive Committee, is given general supervision and direc-

Defendants' Exhibit No. 21—(Continued)

tion of the debtor's business in all its departments and over all its officers, agents and employes;

And it further appearing to the Court that Charles Elsey, President of the debtor, is its chief operating officer, directing all of its operations as a common carrier, subject only to the supervision and direction of the Chairman of the Executive Committee;

And it further appearing to the Court that the Chairman of the Executive Committee has conducted all negotiations as to the formulation of pending form of reorganization of the debtor with representatives of holders of the First Mortgage Bonds and its junior creditors, all of whom are in the East, including Reconstruction Finance Corporation, which is undertaking to provide up to ten million dollars of new money to be expended in improving the property of the debtor and for working capital;

And it further appearing that Messrs T. M. Schumacher and Charles Elsey, if appointed trustees of the debtor, to serve with the additional trustee hereinafter mentioned; are willing to serve without compensation other than that which they are now receiving as such executive officers, and to perform all of their duties pertaining to such officers, so that the appointment of the trustees herein will be without cost to the estate of the debtor, except the salary or compensation of the additional trustee hereinafter mentioned;

Defendants' Exhibit No. 21—(Continued)

And it further appearing to the Court that under the provisions of subdivision (c) of said amendatory Section 77, it is necessary for the Court to appoint an additional trustee, who within one year prior hereto has not been an officer, director or employe of the debtor, any subsidiary corporation or any holding company connected therewith;

It Is Hereby Ordered:

1. That T. M. Schumacher, Chairman of the Executive Committee of the debtor; Charles Elsey, President of the Debtor; and Sidney M. Ehrman, who within one year prior to the date of this Order has not been an officer, director or employe of the debtor, any subsidiary corporation or any holding company connected therewith, be and they hereby are appointed trustees of the debtor's property, which appointments, as well as the other provisions of this Order, shall be effective as of the beginning of business on October 1, 1935, upon ratification thereof by the Interstate Commerce Commission, as provided in subdivision (c) of said amendatory Section 77.

2. That said trustees shall have all the title and shall exercise, subject to the control of this Court and consistent with the provisions of said amendatory Section 77, all of the powers of trustees appointed pursuant to Section 44 of said Act; and, to the extent not inconsistent with said amendatory Section 77, the powers of a receiver in equity pro-

Defendants' Exhibit No. 21—(Continued)

ceeding; and, subject to the control of this Court and the jurisdiction of the Interstate Commerce Commission, as provided by the Interstate Commerce Act as now or hereafter amended, the power to operate the business of the debtor, which business shall be conducted in the name of the debtor by its regularly elected or appointed corporate officers, agents and employes, but under and subject to the direction of said trustees.

3. That said trustees shall have all of the powers, rights, privileges, duties and obligations heretofore granted to or imposed upon the debtor pursuant to the Order of this Court entered herein August 2, 1935, and any and all orders supplementary thereto or amendatory thereof; and each and all of the orders heretofore entered in this proceeding shall, with respect to the said trustees and the property of the debtor, be of like force and effect as though said trustees were therein specifically named in the place of the debtor, all of said orders being hereby incorporated in and made a part of this Order by reference.

4. That within five days from and after October 1, 1935, each of said trustees shall execute and file with the Clerk of this Court a bond or bonds with one or more sureties approved by the Clerk of this Court, for the benefit of whom it may concern, in the sum of Twenty-five thousand dollars, conditioned to the effect that they will well and truly perform

Defendants' Exhibit No. 21—(Continued)
the duties of their office and duly account for any moneys or properties which may come into their hands, and abide by and perform all things which they shall be directed by the Court to do.

5. That this Court reserves full right and jurisdiction to make from time to time such additional orders herein as to the Court shall seem proper, as well as any orders amplifying, extending, limiting or otherwise modifying this Order, and in all respects to regulate and control the conduct of said trustees.

Dated: September 23, 1935.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANTS' EXHIBIT No. 22

In the District Court of the United States, for the
Northern District of California, Southern
Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

OPINION AND ORDER CONFIRMING THE
APPOINTMENT OF TRUSTEES AS AP-
POINTED BY THE COURT AND RATI-
FIED BY THE INTERSTATE COMMERCE
COMMISSION

The above proceeding was initiated on August 2, 1935, by the filing of a petition by the debtor representing that it was unable to meet its financial obligations as they became due and praying for the opportunity to effect a reorganization under the provisions of Section 77 of the Bankruptcy Act.

At the time the petition was filed the Bankruptcy Act made it optional with the Court either to allow the debtor to remain in possession of and to continue to operate its railroad and other properties during the pendency of the reorganization proceeding, or to appoint a trustee or trustees for that purpose.

It was represented to the Court that there was no occasion to appoint a trustee or trustees; that Mr.

Defendants' Exhibit No. 22—(Continued)

Charles Elsey, a resident of this district and who maintained his office in San Francisco, was the President of the Company and in immediate charge of the debtor's railroad and properties; that he had been in the service of the Company for many years and was thoroughly familiar with its properties and its various problems; that he managed its affairs efficiently and economically; that he had not come into the service of the Company at the instance of any particular interest, nor did he represent any particular interest; that if no trustee were appointed, he would continue as President of the Company, to manage and operate its railroad and properties; and that he could be fully relied upon to do so faithfully and efficiently and in the interest of all parties concerned without distinction between them.

The Court inquired into the representations so made and examined Mr. Elsey under oath, and came to the opinion that the representations were true, that the control, operation and management of the debtor's properties could safely be left to him as the President of the debtor, and that no useful purpose would be served by the appointment of a trustee or trustees.

Because of this conclusion, the Court in its order approving the petition of the debtor as properly filed, refrained from appointing a trustee and authorized and directed the debtor to continue in the possession and operation of its properties. At the time the Court made this order it explicitly

Defendants' Exhibit No. 22—(Continued)

informed Mr. Elsey that the properties of the debtor were now in the custody of the Court and his primary obligation was to the Court and the Court relied upon him to see to it that the properties were properly and economically managed and operated, and received from Mr. Elsey his assurance that he so understood and would govern himself accordingly. Since that time the Court has had no reason to doubt the correctness of its opinion as to the truth of the representations made to it concerning Mr. Elsey, or its confidence in the assurances given by him.

Subsequently to the order referred to, the Bankruptcy Act was amended by Congress, making it mandatory upon the Court to appoint one or more trustees, and providing that if one who was connected with the debtor were appointed, there should also be appointed one who had no such connection, such appointment to be subject to confirmation by the Interstate Commerce Commission.

Immediately upon such amendment being made, the Court proceeded, on formal hearing in the manner required by the Act, to appoint trustees for the property of this particular debtor. The Court desired that at least one trustee should be a person residing within the district, experienced in railroad management and familiar with the railroad of the particular debtor and in whom the Court had confidence. Such a person was Mr. Elsey.

The large creditors of the debtor and the controlling stockholding interest in it, requested the

Defendants' Exhibit No. 22—(Continued)

appointment of Mr. T. M. Schumacher, Chairman of the Executive Committee of the debtor, representing that he had conducted all negotiations looking to the formulation of a plan of reorganization. Mr. Schumacher has his residence and his office in New York. The Court was willing to accede to this request, provided there was also appointed as trustee one who resided and had his office in this district and could attend to the immediate management and operation of the property.

The selection of Mr. Elsey and Mr. Schumacher required the selection of a third trustee not connected with the debtor. As such trustee the Court selected Mr. Sidney M. Ehrman, a lawyer of large experience, in whose discernment, judgment and integrity it had full confidence.

For the reasons stated, the Court appointed three persons named. This appointment being made, the Interstate Commerce Commission was petitioned to ratify it. The Commission has now made its order ratifying the appointment of Mr. Schumacher and Mr. Ehrman, but declining to ratify that of Mr. Elsey.

It is evident that looking at the trustees as a unit, a board, as it were, the composition of the board without Mr. Elsey is very different from that which the Court contemplated. The Court conceives that the primary duty of the trustees is to manage and operate the railroad and other properties of the debtor while they are in the custody of the Court, and for this reason the Court desired that

Defendants' Exhibit No. 22—(Continued)

one of the trustees should be a person who could devote himself on the ground to the immediate and active management of the debtor's railroad and property. Neither Mr. Schumacher or Mr. Ehrman is in a position to do this. The Court has also some doubt as to the feasibility, or at least the efficiency, of an administration by two trustees, the concurrence of both of whom is necessary for any action taken, and one of whom resides in San Francisco and the other in New York.

The Court has the power to revoke the appointments already made and to make new appointments conforming to what it believes the necessities of the case require, such new appointments, of course, to be subject, in turn, to ratification by the Commission. That course, however, would cause considerable delay, which is to be avoided if possible, and the Court believes that the particular object it had in mind by the appointment of Mr. Elsey can be substantially accomplished by the trustees employing him as their agent to manage the railroad and properties of the debtor. The Court has consulted with Mr. Elsey, who has expressed his willingness to act in that capacity.

It Is Therefore Hereby Ordered:

1. That T. M. Schumacher and Sidney M. Ehrman be and the same are the trustees of the properties of the debtor, duly appointed by this Court and ratified by the Interstate Commerce Commission.

Defendants' Exhibit No. 22—(Continued)

2. That each of said trustees shall forthwith and within ten (10) days from the date hereof execute and file with the Clerk of this Court a bond or bonds, with one or more sureties approved by the Clerk of this Court, for the benefit of whom it may concern, in the sum of \$25,000, conditioned to the effect that he will well and truly perform the duties of his office and duly account for any moneys or properties which may come into his hands and abide by and perform all things which he shall be directed by the Court to do.

3. That said trustees be and they are hereby instructed and directed to engage Charles Elsey as their agent to operate and manage the railroad and properties of the debtor.

4. That said trustees shall have all the title and shall exercise, subject to the control of this Court and consistent with the provisions of amendatory Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, all of the powers of trustees appointed pursuant to Section 44 of said Act; and, to the extent not inconsistent with said Section 77, the powers of a receiver in equity proceedings; and, subject to the control of this Court and the jurisdiction of the Interstate Commerce Commission as provided by the Interstate Commerce Act as it now exists or may hereafter be amended, the power to conduct the business of the

Defendants' Exhibit No. 22—(Continued)

debtor, with authority to them to conduct such business to the extent they deem advisable in the name of the debtor and by its officers, agents, and employees:

5. That said trustees shall have all of the powers, rights, privileges, duties and obligations heretofore granted to or imposed upon the debtor by the order of this Court entered herein August 2, 1935, and any and all orders supplementary thereto or amendatory thereof; and each and all of the orders heretofore entered in this proceeding shall, except so far as the same are not inconsistent with the express provisions of this order, be of like force and effect with respect to the said trustees and the property of the debtor as though said trustees were therein specifically named in the place of the debtor, all of said orders being hereby incorporated in and made a part of this order by reference.

6. That this Court reserves full right and jurisdiction to make from time to time such additional orders herein as to the Court shall seem proper, as well as any orders amplifying, extending, limiting or otherwise modifying this order, and in all respects to regulate and control the conduct of said trustees.

Dated: November 9, 1935.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Feb. 11, 1949.

1930 *Western Pacific R.R. Corp., et al., vs.*

DEFENDANTS' EXHIBIT No. 23

Whitman, Ransom, Coulson & Goetz,
40 Wall Street,
New York (5), N. Y.

Original Filed Dec. 17, 1943.
With Clerk, U. S. Dist. Court,
San Francisco.

In the District Court of the United States for the
Northern District of California, Southern
Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

ORDER AUTHORIZING AND DIRECTING
TRANSFER OF PREFERRED AND COM-
MON STOCK OF THE DEBTOR TO THE
REORGANIZATION COMMITTEE AND
APPROVING ACTION OF THE COMMIT-
TEE IN JOINING IN A CONTRACT FOR
SECURING CONTROL OF SUCH STOCK
AND ACTS OF THE COMMITTEE IN CON-
NECTION WITH SUCH CONTRACT

The petition filed December 1, 1943, by Frederick
H. Ecker, Frank C. Wright and Robert E. Coulson,
the Reorganization Committee designated to put
into effect and carry out the plan of reorganization

of the debtor above named, for an order authorizing and directing transfer of the preferred and common stock of the debtor to the Reorganization Committee and approving action of the Committee in joining in a contract for securing control of such stock and other acts of the Committee in connection with such contract, came on duly to be heard and was heard this day and thereupon submitted.

The Court, being fully advised, finds that notice of the hearing upon said petition has been given as prescribed by the order of this Court dated December 1, 1943, that all of the averments of said petition are true, that the transfer and delivery by The Western Pacific Railroad Corporation of the preferred and common stock of the debtor company to the Reorganization Committee is necessary for carrying out and making effective the plan of reorganization of the debtor, and that it is for the best interests of the estate of the debtor that this order be made.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the Western Pacific Railroad Corporation, in order to carry out and make effective the plan of reorganization of the debtor, be and hereby is directed to assign, transfer and deliver or cause to be assigned, transferred and delivered to the Reorganization Committee or its nominee, all of the preferred and common stock of the debtor company; provided that such assignment, transfer and delivery

shall be made at the time and place fixed in a written request of the Reorganization Committee;

2. That the action of the Reorganization Committee in joining in and becoming a party to the agreement dated November 22, 1943, with The Western Pacific Railroad Corporation and its secured creditors, a copy of which was filed with the Court on December 1, 1943, be and the same hereby is in all respects approved;

3. That the Reorganization Committee is hereby authorized, in its discretion, to make written request upon The Western Pacific Railroad Corporation for the assignment, transfer and delivery of the preferred and common stock of the debtor company and for such other action by The Western Pacific Railroad Corporation as the Reorganization Committee may deem necessary or convenient for the purpose of carrying out and making effective the plan of reorganization of the debtor, and the Reorganization Committee is authorized to accept transfer of such stock for the purpose of carrying out and making effective the plan of reorganization of the debtor; and

4. That the Reorganization Committee be and hereby is authorized to file with the Interstate Commerce Commission such applications for authority or approval as may be appropriate in providing for the payment of stock transfer taxes out of the debtor's estate in respect of the transfer of the pre-

ferred and common stock of the debtor company if any such taxes shall lawfully be applicable.

Dated: December 17, 1943.

A. F. ST. SURE.

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANTS' EXHIBIT No. 24A

Pillsbury, Madison and Sutro,
Standard Oil Building,
San Francisco, California.

Whitman, Ransom, Coulson & Goetz,
40 Wall Street,
New York 5, N. Y.

Filed Oct. 23, 1944.

C. W. Calbreath, Clerk.

In the District Court of the United States for the
Northern District of California, Southern
Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

ORDER APPROVING DESIGNATIONS BY
THE REORGANIZATION COMMITTEE
UNDER THE PLAN OF REORGANIZA-

Defendants' Exhibit 24A—(Continued)

TION OF THE DEBTOR, OF THE TRUSTEES, TRANSFER AGENTS, REGISTRARS, SCRIP AGENT, DEPOSITARY AND EXCHANGE AGENT AND ENGRAVER AND PRINTER OF SECURITIES FOR PURPOSES OF THE PLAN OF REORGANIZATION AND AUTHORIZING AGREEMENTS OR ARRANGEMENTS PROPOSED BY SAID COMMITTEE FOR THEIR COMPENSATION AND EXPENSES

The petition filed on September 28, 1944, by Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the Reorganization Committee designated to put into effect and carry out the plan of reorganization of the debtor above named, for an order approving designations by the Reorganization Committee of the trustees, transfer agents, registrars, scrip agent, depositary and exchange agent and engraver and printer of securities for purposes of the plan of reorganization and authorizing agreements or arrangements proposed by said Committee for their compensation and expenses, duly came on to be heard and was heard on the 16th day of October, 1944, and has been submitted.

The Court being duly advised in the premises finds that due and proper notice of the hearing upon said petition in the form prescribed by the order of this Court dated and filed on the 29th day

Defendants' Exhibit 24A—(Continued)

of September, 1944, has been admitted by all parties named in said order and that all of the allegations and representations contained in the petition are true. The Court further finds and concludes:

(a) The determinations made by the Reorganization Committee as to the services which will be required in connection with the preparation and initial issuance of the new securities and the deposit of existing securities in connection with carrying out and making effective the plan of reorganization, and of the services to the reorganized company in connection with the securities to be issued under the plan, after its consummation, and the tentative selections made by said Committee of the banking institutions and of an engraver-printer to perform services in said respects, are appropriate for the purposes of the plan and should be approved; and

(b) The arrangements proposed by the Reorganization Committee for the compensation of the several banking institutions which will perform services in connection with the initial issuance of new securities and the consummation of the plan, on the general basis of per piece charges (plus, in some instances, certain expenses), subject to a maximum limit regardless of the number of bond, stock or scrip pieces that may actually be required, are reasonable and appropriate and should be approved.

Defendants' Exhibit 24A—(Continued)

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

(1) That the designations of banking institutions tentatively made by the Reorganization Committee, as listed below, be and hereby are approved, subject, in the instance of the Chase National Bank of the City of New York, as New York paying agent and registrar of the new first mortgage bonds, Crocker First National Bank of San Francisco, as San Francisco registrar of the general mortgage bonds and as San Francisco registrar of both the preferred and common stocks, and Wells Fargo Bank & Union Trust Co., as San Francisco transfer agent of both said stocks, to the determination of the Reorganization Committee that the charges which will be made to the reorganized company after the consummation of the plan will be satisfactory, namely: Banking Institutions Approved, Showing Location and Function.

First Mortgage

Crocker First National Bank of San Francisco, Trustee and Registrar, San Francisco.

The Chase National Bank of the City of New York, Paying Agent and Registrar, New York.

General Mortgage

The Chase National Bank of the City of New York, Trustee and Registrar, New York.

Defendants' Exhibit 24A—(Continued)

Crocker First National Bank of San Francisco,
Registrar, San Francisco.

Preferred Stock and Common Stock

Central Hanover Bank and Trust Company,
Transfer Agent, New York.

Wells Fargo Bank & Union Trust Co., Transfer
Agent, San Francisco.

City Bank Farmers Trust Company, Registrar,
New York.

Crocker First National Bank of San Francisco,
Registrar, San Francisco.

Script for General Mortgage Bonds, Preferred
Stock and Common Stock

City Bank Farmers Trust Company, Scrip
Agent, New York.

Consummation of Plan

Guaranty Trust Company of New York, Depository and Exchange Agent, New York.

(2) That the designation tentatively made by the Reorganization Committee of the Security Banknote Company as engraver and printer of the securities required for the consummation of the plan be and hereby is approved.

(3) That the Reorganization Committee be and hereby is authorized to make arrangements, by such Committee resolution or form of agreement as said

Defendants' Exhibit 24A—(Continued)

Committee upon advice of counsel may determine, for compensation to be paid out of the debtor's estate prior to the consummation of the plan, or thereafter by the reorganized company, to said banking institutions and said engraver-printer in connection with the preparation and initial issuance of the new securities and the deposit of existing securities required to carry out and make effective the plan, upon the general basis of a per piece charge (plus, in some instances, certain expenses), subject to a maximum limit regardless of the number of bond, stock or scrip pieces that may actually be required and subject to such modifications of the arrangements proposed in the petition as may be deemed by said Committee to be necessary or appropriate.

Dated: October 23, 1944.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANT'S EXHIBIT No. 24B

Pillsbury, Madison & Sutro,
Standard Oil Building,
San Francisco, California.

Whitman, Ransom, Coulson & Goetz,
40 Wall Street,
New York 5, New York.

Filed Oct. 23, 1944
C. W. Calbreath, Clerk

In the District Court of the United States, for the
Northern District of California Southern Di-
vision

No. 26591-S

In the Matter of
THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

ORDER MAKING AN ALLOWANCE TO BE
PAID OUT OF THE DEBTOR'S ESTATE
FOR CERTAIN EXPENSES INCURRED
AND TO BE INCURRED IN CONNEC-
TION WITH THE PROCEEDINGS AND
PLAN OF REORGANIZATION BY THE
REORGANIZATION COMMITTEE

The petition filed on September 28, 1944, by Fred-
erick H. Ecker, Frank C. Wright and Robert E.
Coulson, the Reorganization Committee designated
to put into effect and carry out the plan of reorgan-
ization of the debtor above named, for an order
making an allowance to be paid out of the debtor's

Defendant's Exhibit No. 24B—(Continued)
estate for certain expenses incurred and to be incurred in connection with the proceedings and plan of reorganization by the Reorganization Committee, duly came on to be heard and was heard on the 16th day of October, 1944, and has been submitted.

The Court being fully advised in the premises, finds that due and proper notice of the hearing upon said petition in the form prescribed by the order of this Court dated and filed on the 29th day of September, 1944, has been admitted by all parties named in said order and that all of the allegations and representations contained in the petition are true. The Court further finds and concludes:

(a) That, pursuant to Section 77(c) (12) of the Bankruptcy Act, the Interstate Commerce Commission by its order dated September 7, 1944, has fixed the maximum limit for reasonable and necessary expenses of the Reorganization Committee, other than the fees and expenses of the attorneys for said Committee, in the amount of \$197,111.23, of which the amount of \$60,638.48 constitutes the maximum limit fixed for the contingent tax liability described in said order and the amount of \$136,472.75 constitutes the maximum limit fixed for all other purposes, without limitation as to individual amounts with respect to component items, as described in said order;

(b) That for the purpose of enabling the Reorganization Committee to perform its proper functions in an orderly and expeditious manner, the procedure for auditing and payment of bills or

Defendant's Exhibit No. 24B—(Continued)

statements of expenditures, and for the advancement of funds to said Committee, which is set forth in paragraphs 4 and 5 of the petition upon which this order is made, is appropriate and advisable and should be approved.

(c) That certain expenses heretofore incurred by the Reorganization Committee, in the aggregate amount of \$3,144.00, the detail of which was submitted to the Court upon the hearing, were properly incurred and are within the scope of the order of the Interstate Commerce Commission, dated September 7, 1944.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

(1) That an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred and to be incurred by the Reorganization Committee under the plan of reorganization of The Western Pacific Railroad Company, exclusive of fees and expenses of said Committee's counsel, is hereby made in the aggregate amount of \$197,111.23, or so much thereof as may be required in carrying out the plan, of which the amount of \$60,638.48, or so much thereof as may be required, is allowed for the contingent tax liability described in the order of the Interstate Commerce Commission of September 7, 1944, and the amount of \$136,472.75, is allowed for all other expenses without limitation as to individual amounts with respect to component items, as described in said order;

(2) That the Trustees of the debtor's estate be

Defendant's Exhibit No. 24B—(Continued)
and hereby are directed to reimburse the Reorganization Committee and its officers and members out of the debtor's estate for certain expenditures heretofore incurred by them, in the aggregate amount of \$3,144.00, the detail of which was submitted to the Court upon the hearing.

(3) That further payments of the actual and reasonable expenses of the Reorganization Committee (whether incurred before or after the date of this order) be made out of the debtor's estate by the Trustees thereof, so long as said Trustees are in control of the same, and thereafter by the reorganized company, by the following procedure:

(a) The Reorganization Committee shall approve bills or statements of expenditures by voucher or covering letter, as may be convenient, signed by the Chairman or Secretary of the Committee, and shall submit the same to the Treasurer for the Trustees of the debtor or of the reorganized company, as the case may be;

(b) The Auditor for the Trustees of the debtor or of the reorganized company, as the case may be, shall examine all such bills or statements and, if satisfied they are in order and that the items covered thereby are within the scope of the order of the Interstate Commerce Commission, dated September 7, 1944, shall approve them for payment, subject to the maximum limit of \$136,472.75 contained in said order of said Commission, and said Treasurer shall then make payment of the same upon such approval by said Auditor;

Defendant's Exhibit No. 24B—(Continued)

(c) Said Auditor shall keep a separate and detailed account of all such bills and statements so honored and shall make reports thereof to the Court within a reasonable time after the close of each month in which any such bills or statements are honored;

(4) That funds for the payment of actual and reasonable expenses of the Reorganization Committee may be advanced to it, from time to time, out of the debtor's estate or by the reorganized company, as aforesaid, upon written request to said Treasurer, setting forth the purpose of such advances and signed by the chairman or secretary of said Committee. Said request shall be audited and reported to the Court by said Auditor under the procedure set forth in paragraph (3) of this order. Said Committee shall account to said Auditor, from time to time, for all advances and shall file with him all receipts or other evidences of expenditures paid from such advances, and shall return any unexpended portion thereof to said Treasurer.

(5) All such further payments and advances to the Reorganization Committee under the provisions of this order shall be subject to final approval and allowance by this Court, at such time or times and upon such showing as the Court may direct.

Dated, October 23, 1944.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANT'S EXHIBIT No. 25

Allan P. Matthew,
1500 Balfour Building,
San Francisco, 4, California.

Filed April 30, 1945,
C. W. Calbreath, Clerk

In the District Court of the United States, for the
Northern District of California, Southern Di-
vision

No. 26591-S

In the Matter of
THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

NINTH AND FINAL REPORT AND AC-
COUNTING BY THE TRUSTEES OF THE
PROPERTY OF THE DEBTOR, AND PE-
TITION FOR APPROVAL OF THEIR
ACTS AND ACCOUNTS, FOR THEIR DIS-
CHARGE AS TRUSTEES AND FOR THE
EXONERATION OF THEIR BONDS

T. M. Schumacher and Sidney M. Ehrman, the
Trustees of the properties of the Debtor above
named, hereinafter referred to as the Trustees,
hereby render their Ninth and Final Report and
Accounting of Their Administration of the Prop-
erties of the Debtor, and Petition for the Approval
of Their Acts and Accounts, for Their Discharge as
Trustees and for the Exoneration of Their Bonds,
as follows:

Defendant's Exhibit No. 25—(Continued)

I.

A statement of account showing the cash receipts and disbursements of the Trustees for the period from January 1, 1944, through December 31, 1944, is attached hereto as Exhibit 1. The Trustees have filed periodically with the Clerk of the Court during the year 1944, copies of monthly reports giving operating results and general statistics of the administration of the property and also monthly general balance sheets. The total railway operating revenues for the entire year of 1944 rose to \$52,849,946.71 from the previous high of \$50,360,509.25 experienced during the preceding year, an increase of \$2,489,437.46. A comparison of such revenues for each of the twelve months of the calendar year 1944, covered by this report, with each of the corresponding months of the calendar year 1943, is shown in the following tabulation:

Total Railroad Operating Revenues

Period	1944	1943	Increase or (Decrease)
January	\$ 4,177,091.30	\$ 2,989,578.50	\$ 1,278,512.80
February	2,755,104.81	2,836,933.05	(81,828.24)
March	4,558,775.54	3,672,138.61	886,636.93
April	4,681,363.78	3,666,868.50	1,014,495.28
May	4,654,846.84	4,000,095.45	654,751.39
June	3,939,439.05	4,218,061.84	(278,622.79)
July	3,605,985.91	4,786,908.83	(1,180,922.92)
August	4,291,967.85	5,257,723.48	(965,755.63)
September	5,120,837.60	4,945,353.58	175,484.02
October	5,446,573.73	4,798,450.96	648,122.77
November	4,961,522.43	4,646,685.92	314,836.51
December	4,656,437.87	4,632,710.53	23,727.34
Calendar Year.....	<u>\$52,849,946.71</u>	<u>\$50,360,509.25</u>	<u>\$ 2,489,437.46</u>

Defendant's Exhibit No. 25—(Continued)

A statement showing the monthly operating revenues, expenses and other items leading to net income, for the calendar year 1944 is attached hereto as Exhibit 2. The volume of freight and passengers carried and revenues received during 1944 were the greatest in the history of the Debtor, and the year 1944 was the fourth consecutive year in which all of the Debtor Company's records for traffic volume and gross revenues were broken. The major portion of such business resulted from handling of wartime traffic. As shown in Exhibit 2 the net income for the year 1944 amounted to \$10,313,502.49 as compared with net income for the preceding year of \$18,505,499.84. (As reported in the eighth report and accounting, no Federal Income or Excess Profits Taxes were accrued in 1943.)

There is attached hereto as Exhibit 3 a statement showing changes in Capital Accounts due to acquisitions, improvements and retirements of property and investments in affiliated companies by months during the calendar year 1944. Capital Accounts were increased during 1944 in the net amount of \$5,433,225.59.

II.

By its order of April 17, 1944, the court authorized the Trustees to do certain addition and betterment work then deemed requisite for normal improvement, operation and maintenance of the railroad of the Debtor during the year 1944 as set forth in the Petition filed by the Trustees on March 29, 1944. The total cost of such work was estimated at

Defendant's Exhibit No. 25—(Continued)

\$2,639,269, of which \$2,112,466 was estimated as chargeable to Capital Account. Due principally to war-time stringency of labor and materials, the Trustees were not able to perform all of the work authorized by the order of April 17, 1944, but progress was made on various projects contemplated by the order which resulted in total charges of \$1,298,437.98 during the year, of which \$1,025,216.66 represents charges to Capital Account.

As the year progressed, the Trustees were confronted with the necessity of performing certain additional improvement work not contemplated when the Court made its order of April 17, 1944. Such additional work was required, for the most part, by the continuing increase in traffic handled and by the need for facilities in connection with war activities and establishments of the Army, Navy and other war agencies. The amount expended during the year 1944 upon such additional work was \$135,807.52 over and above the Contingency Item of \$100,000 approved in said order of April 17, 1944. Of the amount so expended during 1944 the sum of \$101,907.15 represented charges to Capital Account, over and above the similar charges of \$75,000 included as part of said Contingency Item.

Thus the total charges during 1944 for work contemplated by the Court's order of April 17, 1944, together with the charges for such additional work, amounted to \$1,534,245.50 of which \$1,202,123.81 represents charges to Capital Account.

In addition to the expenditures enumerated in

Defendant's Exhibit No. 25—(Continued)

the foregoing paragraph, charges totalling \$1,238,137.66, of which \$850,123.99 represents charges to Capital Account, were incurred during 1944 in connection with projects (exclusive of those enumerated in sections III, IV and V) authorized by various orders of the Court issued prior to 1944 which were carried forward or completed during the year 1944.

III.

By its order of May 3, 1943, the Court authorized the Trustees to install block signals and a centralized traffic control system for more expeditious handling of trains together with appurtenant necessary housing facilities in the Feather River Canyon area between Oroville and Portola, California, at an estimated total cost of \$1,347,612. Work was commenced upon the project during 1943 and was carried forward during 1944. The expenditures upon the project during 1944 totalled \$1,042,093.39 of which \$999,244.69 was chargeable to Capital Account. The aggregate adjusted expenditures on the project during both 1943 and 1944 were \$1,225,721.60 of which \$1,170,775.82 was chargeable to Capital Account. At the close of the year 1944 the greater part of the system was in operation, and at the date of filing this report it is anticipated that the entire system will be in full operation by the month of June, 1945.

IV.

By its order of July 21, 1941, the Court authorized the Trustees to acquire certain rolling stock to wit:

Defendant's Exhibit No. 25—(Continued)

3 Diesel-electric freight locomotives

350 steel box cars

300 steel flat cars

4 stainless steel passenger coaches

and to finance acquisition of such equipment by means of an Equipment Trust. The Diesel-electric freight locomotives were delivered during 1941 and 1942 and the 300 flat cars during 1942 and 1943. By its order of May 15, 1944, the Court authorized the Trustees to pay an estimated increase of \$53,900 in the price for the 350 box cars because of advances in costs of materials and appliances. None of the box cars was delivered during 1944 but at the date of filing this report all of the cars have been received. The 1944 accounts were credited with \$4,342.31 representing discounts on specialties embodied in these cars. The four stainless steel passenger cars authorized by said order of July 21, 1941, have not yet been constructed.

V.

By its order of November 22, 1943, the Court authorized the Trustees to purchase and acquire six 5400 H.P. Diesel-electric freight locomotives from Electro-Motive Division of General Motors Corporation, LaGrange, Illinois, at the approximate cost (including freight, taxes on freight charges, and coach fares for messengers) of \$504,870 per locomotive, or an aggregate of \$3,029,220 for the six locomotives, and to finance the purchase of such locomotives under some form of arrangement there-

Defendant's Exhibit No. 25—(Continued)

after to be determined which would provide for making a down payment of approximately 25% of the cost from funds on hand and borrowing the remainder on terms calling for repayment thereof within approximately five years.

By its order of June 26, 1944, the Court authorized the Trustees to finance the purchase of such Diesel-electric locomotives by a conditional sale agreement with The Chase National Bank of the City of New York in substantially the form submitted to the Court as Exhibit A attached to the petition of the Trustees filed June 13, 1944. The Trustees executed such a conditional sale agreement under date of June 1, 1944, and all of the six locomotives were delivered during the year 1944. The total cost of such locomotives was \$3,030,878.11, of which amount \$3,030,871.17 was chargeable to Capital Account.

VI.

By its order of May 1, 1944, the Court authorized the Trustees to make a contract through competitive bidding for the purchase of 100 freight cars of the so-called mill type of gondola design at an estimated cost of approximately \$3,875 per car, f.o.b. manufacturer's plant, the method of financing the payment of the purchase price to be submitted to the Court for approval. Such a contract was made during 1944 with Mt. Vernon Car Manufacturing Company, the low bidder, at the price of \$3,897.77 Illinois. The Trustees concluded that the entire per car, f.o.b. manufacturer's plant at Mt. Vernon,

Defendant's Exhibit No. 25—(Continued)

Illinois. The Trustees concluded that the entire purchase price of the cars should be paid in cash, thus eliminating the need for submission of any plan for financing the purchase price. None of the cars was delivered during 1944 but at the date of filing this report it is anticipated that deliveries thereof will be completed by June 1, 1945.

VII.

By its order of November 20, 1944, the Court authorized the Trustees to rehabilitate, modernize, enlarge and improve a certain freight facility of the railroad of the Debtor located at 8th and Brannan Streets, San Francisco, California, at an estimated cost of \$58,246, and to amend the lease of said facility then outstanding. The work so authorized was commenced during the calendar year 1944 and the amount expended thereon during that year was \$12,870.09, of which \$9,860.26 was charged to Capital Account. At the date of filing this report such work has been completed and the lease of the facility has been amended as required by said order.

VIII.

Charges during 1944 for preliminary expenses incident to projects included in the program of improvement work for 1945 amounted to \$3,990.27 of which \$3,962.03 represents charges to Capital Account.

Accounting adjustments with respect to charges during years previous to 1944 resulted in total

Defendant's Exhibit No. 25—(Continued)
charges of \$49,670.32 and a credit to Capital Account of \$6,776.72.

Property retired during 1944 resulted in total charges of \$15,411.29 with \$107,734.86 being credited to Capital Account.

IX.

The total of all charges set forth in more detail in Sections II to VIII, both inclusive, in this report, is the net amount of \$6,922,954.32 of which \$5,977,332.06 represented net charges to Capital Account. Details of the latter amount as it was accrued monthly for Road and Equipment and Miscellaneous Physical Property Capital Accounts appear on page 1 of Exhibit 3 attached hereto.

X.

By its order of April 10, 1944, the Court authorized the Trustees to consent to the dissolution of Deep Creek Railroad Company, a subsidiary of the Debtor. Such consent was given and the dissolution of Deep Creek Railroad Company was accomplished during the year 1944.

XI.

The Salt Lake City Union Depot and Railroad Company (hereinafter called the "Depot Company") is a Utah corporation owning a passenger station and terminal facilities in Salt Lake City, Utah. At all times since long prior to the commencement of this proceeding one-half of the outstanding shares of common stock of the Depot Company have been owned by the Debtor and the other

Defendant's Exhibit No. 25—(Continued)

one-half thereof by The Denver and Rio Grande Western Railroad Company and its Reorganization Trustees.

By its order of March 20, 1944, in this proceeding the Court authorized the Debtor and the Trustees to take steps necessary to procure the amendment of the Articles of Incorporation of the Depot Company so that it would be authorized to issue shares of preferred stock having an aggregate par value of \$600,000, subject to the approval of the Interstate Commerce Commission. By said order the Court also authorized the Trustees to purchase one-half of said shares of preferred stock for the sum of \$300,000 in cash upon condition that the Reorganization Trustees of The Denver and Rio Grande Western Railroad Company should concurrently purchase the other one-half of such shares for an equal amount. The approval of the Interstate Commerce Commission was granted and all other conditions stated in said order of March 20, 1944, were fulfilled, and pursuant thereto the Trustees purchased 3,000 shares of the preferred stock of the Depot Company for the sum of \$300,000 in cash during the year 1944. The Depot Company thereupon used funds obtained by the issuance and sale of its preferred stock to discharge all of the indebtedness secured by its first mortgage and to obtain a release thereof.

Thereafter and on June 10, 1944, the Depot Company elected to terminate the lease agreement under which its station and terminal facilities had been used and operated by the Debtor and by The Den-

Defendant's Exhibit No. 25—(Continued)

ver and Rio Grande Western Railroad Company prior to the commencement of this proceeding, which lease had never been affirmed by the Trustees.

By its order of July 24, 1944, the Court authorized the Trustees, subject to approval of the Interstate Commerce Commission, to enter into a lease of the station and terminal facilities of the Depot Company jointly with the Reorganization Trustees of The Denver and Rio Grande Western Railroad Company, such lease to be in substantially the form attached as Exhibit A to the petition of the Trustees filed in this proceeding July 5, 1944. Such proposed lease was thereafter approved by the Interstate Commerce Commission, and the lease was thereupon executed by all parties thereto under date of December 1, 1944.

By its order of September 18, 1944, the Court authorized the Trustees to make a final settlement with the Depot Company for the use of its premises by the Trustees for the period ending immediately prior to the effective date of the new lease hereinabove described. Such settlement has been accomplished.

XII.

By its order of March 3, 1944, the Court authorized the Trustees to establish, with funds derived from the earnings of the railroad of the Debtor during the year 1943, a "reserve fund for contingent tax liabilities" in the amount of \$7,100,000 to be invested in United States Treasury Securities and to be used for payment of any Federal income and ex-

Defendant's Exhibit No. 25—(Continued)

cess profits taxes which might thereafter be found due for the year 1943. During the year 1944 such a fund was established and was invested in United States Treasury Securities.

By its order of May 15, 1944, the Court directed that as funds accumulated in the hands of the Trustees from month to month during the year 1944 for the payment of estimated Federal income and excess profits taxes accruing during that year, the Trustees should invest such funds from time to time in United States Treasury Savings Notes, Series C, to be used for the payment of such taxes as and when liability therefor should mature. Accordingly funds in the aggregate amount of \$7,810,000 were invested by the Trustees in such Savings Notes during the year 1944.

XIII.

By its order of June 26, 1944, the Court authorized the Trustees to make, execute and deliver to certain named persons quitclaim deeds covering the right-of-way formerly occupied by the so-called Calpine Branch of the railroad of the Debtor, said Calpine Branch having been abandoned pursuant to this Court's order of February 26, 1940, and a subsequent order of the Interstate Commerce Commission. Such quitclaim deeds were made, executed and delivered during the year 1944.

XIV.

By its order of July 24, 1944, the Court authorized the Trustees to stipulate for judgment in a cer-

Defendant's Exhibit No. 25—(Continued)

tain condemnation action then pending in the District Court of the United States for the Northern District of California, Northern Division, entitled "United States of America, Plaintiff, vs. 450 Acres of Land in San Joaquin County, California, Irene Louise Brichetti, et al., Defendants" and numbered No. 4456. Such stipulation was given and judgment thereon was entered during the year 1944.

XV.

By its order of June 2, 1944, upon petition of the Trustees and the Reorganization Committee hereinafter described, the Court approved and authorized irrevocable agreements with the Commissioner of Internal Revenue of the United States for the establishment of depreciation accounting with respect to certain road properties of the railroad of the Debtor and certain subsidiaries of the Debtor. During the year 1944 agreements were made with the Commissioner of Internal Revenue in accordance with the authority granted by said order.

XVI.

A.—Leases by Trustees in Reorganization

Incidentally to the operation and maintenance of the railroad of the Debtor, the Trustees have made and entered into the following leases as Lessors during the period from January 1, 1944, to December 31, 1944, both inclusive.

1—Lease, dated January 1, 1944, for term ending December 31, 1944, with option of renewal, to Moore Dry Dock Company, covering several parcels of

Defendant's Exhibit No. 25—(Continued)

land at Oakland, California, at a rental of \$46,522.25 per year.

2—Renewal of Lease, dated June 22, 1943, (Renewal dated March 24, 1944) for term April 15, 1944, to April 15, 1945, to Soule Steel Company, covering parcel of land at Army and Indiana Streets, San Francisco, California, at a rental of \$625.00 per month.

3—Renewal of Lease, dated August 26, 1942, (Renewal dated May 31, 1944) for term July 1, 1944, to July 1, 1945, to United States of America, covering warehouse and land at northwest corner 9th and Brannan Streets, San Francisco, California, at a rental of \$2,083.33 per month.

4—Lease, dated July 8, 1944, for term ending April 30, 1945, to L. H. Butcher Company, covering space in warehouse at 15th and Vermont Streets, San Francisco, California, at a rental of \$640.63 per month.

5—Lease, dated August 9, 1944, for term ending June 14, 1949, to Merchant Shippers Association, covering warehouse at 4th and Oak Streets, Oakland, California, at a rental of \$186.84 per month.

6—Lease, dated September 6, 1944, for term ending April 30, 1949, to F. E. Booth Company, Inc., covering 55,980 sq. ft. of land at 3rd and Marin streets, San Francisco, California, at a rental of \$233.25 per month.

7—Lease, dated September 6, 1944, for term ending June 18, 1947, to Encinal Terminals, covering warehouse at San Leandro St. and 42nd Ave., Oakland, California, at a rental of \$213.67 per month.

Defendant's Exhibit No. 25—(Continued)

B—Leases to Trustees in Reorganization

Incidentally to the operation and maintenance of the railroad of the Debtor, the Trustees have made and entered into the following leases as Lessees during the period from January 1, 1944, to December 31, 1944, both inclusive:

1—Lease to Trustees from General Motors Corporation, dated January 31, 1944, covering General Agent's offices in Detroit, Michigan, for three years from March 1, 1944, at a monthly rental of \$188.00.

2—Lease to Trustees from Railway Exchange Building, Inc., dated March 14, 1944, covering General Agent's offices in St. Louis, Mo., for two years from May 1, 1944, at a monthly rental of \$110.00.

3—Lease to Trustees from Nettie Aronson, dated June 17, 1944, covering Signal Department offices at 16 First Street, San Francisco, California, for one year from July 15, 1944, at a monthly rental of \$125.00.

4. Lease to Trustees from Western Title Insurance Company, dated November 10, 1944, covering General Offices on 5th Floor at 516 Mission Street, San Francisco, California, for two years from November 15, 1944, at a monthly rental of \$135.00 for the first year and \$140.00 per month for the second year.

5. Lease to Trustees from Ollie Day, dated December 30, 1944, covering employees' rooming house at Elko, Nevada, for one year from November 1, 1944, at a monthly rental of \$100.00.

Defendant's Exhibit No. 25—(Continued)

6—Lease to Trustees from Rosine F. Klucny, dated December 30, 1944, covering employees' rooming house at Winnemucca, Nevada, for one year from November 1, 1944, at a monthly rental of \$150.00.

C—Deeds by Trustees in Reorganization

Pursuant to the Court's order of April 10, 1944, the Trustees sold and conveyed certain non-operative real property included in the estate of the Debtor and located in San Francisco, California, to Safeway Stores, Incorporated, by a grant deed dated April 18, 1944, for the sum of \$7,189.77.

Pursuant to the Court's order of October 16, 1944, and the order of the Railroad Commission of the State of California dated October 3, 1944, the Trustees were authorized to sell and convey certain operative property included in the estate of the Debtor and located in San Joaquin County, California, to Woodbridge Vineyard Association by a grant deed dated November 20, 1944, for the sum of \$671.25. The sale was not finally consummated and the title passed until March 5, 1945.

The Trustees have also made the following conveyances during the year 1944:

1—Quitclaim Deed, dated July 1, 1944, to J. J. McPherrin, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

2—Quitclaim Deed, dated July 1, 1944, to United States of America, conveying a strip of right of

Defendant's Exhibit No. 25—(Continued)
way on the abandoned Calpine Branch in California. No monetary consideration.

3—Quitclaim Deed, dated July 1, 1944, to Veste Nelson, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

4—Quitclaim Deed, dated July 1, 1944, to Giacomo Folchi, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

5—Quitclaim Deed, dated July 1, 1944, to Letitia Webster Havey, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

6—Quitclaim Deed, dated July 1, 1944, to Wilbur Dewey Johnson, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

7—Quitclaim Deed, dated July 1, 1944, to Westover Company, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

8—Quitclaim Deed, dated July 1, 1944, to Chas. W. Ede, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

9—Quitclaim Deed, Dated July 1, 1944, to J. J. and O. B. Farrar, conveying a strip of right of way on the abandoned Calpine Branch in California. No monetary consideration.

10—Quitclaim Deed, dated September 11, 1944, to

Defendant's Exhibit No. 25—(Continued)

California Prune & Apricot Growers Association, to clear title of Grantee, property at San Jose, California. No monetary consideration.

D—Deeds to Trustees in Reorganization

The Trustees have also, incidentally to the operation and maintenance of the railroad of the Debtor, acquired certain real property during said period, as follows:

1—Quitclaim Deed, dated April 1, 1944, from Edwa D. Ewing Boggs to the Trustees for clearing title to land at Stockton, California. No monetary consideration.

2—Deed, dated April 12, 1944, from City of Elko to Trustees for railroad yard expansion at Elko, Nevada. Consideration \$3,000.00.

3—Deed, dated July 12, 1944, from Otto A. and Genevieve R. Riffel to Trustees for residence for railroad employee at Blairsden, California. Consideration \$5,000.00.

4—Quitclaim deed, dated September 7, 1943, (although dated in 1943, transaction was not closed until 1944) from The Lang Company to Trustees for clearing title in connection with closing a street at Salt Lake City, Utah. No monetary consideration.

5—Deed, dated October 3, 1944, from City of Winnemucca to Trustees for railroad yard expansion at Winnemucca, Nevada. Consideration \$450.00.

6. Deed, dated December 6, 1944, from Western Realty Company to Trustees for residence for rail-

Defendant's Exhibit No. 25—(Continued)
road employee at Spring Garden. Consideration
\$100.00.

E—Easements Acquired by Trustees
in Reorganization

The Trustees have also, incidentally to the operation and maintenance of the railroad of the Debtor, acquired easements during the year 1944 over three separate pieces of real property for the purposes stated below, as follows:

1—Easement, dated July 31, 1942, (although dated in 1942, the transaction was not closed until 1944), from Peter Paul, Inc., to Central Pacific Railway and Trustees, jointly, for right of way for Industrial Lead Track from the Joint Drill Track of the Southern Pacific Company and The Western Pacific Railroad Company at Oakland, California. No monetary consideration.

2—Easement, dated January 20, 1943, (although dated in 1943, the transaction was not closed until 1944), from Loose-Wiles Biscuit Company to Central Pacific Railway and Trustees, jointly, for right of way for Industrial Lead Track from the Joint Drill Track of the Southern Pacific Company and The Western Pacific Railroad Company at Oakland, California. No monetary consideration.

3—Easement, dated October 31, 1943, (although dated in 1943, the transaction was not closed until 1944), from Frederickson & Watson Construction Company and Riviera Packing Company to Central Pacific Railway and Trustees, jointly, for right of

Defendant's Exhibit No. 25—(Continued)

way for Industrial Lead Track from the Joint Drill Track of the Southern Pacific and The Western Pacific Railroad Company at Oakland, California. No monetary consideration.

F—Easements Granted by Trustees
in Reorganization

The Trustees have also, incidentally to the operation and maintenance of the railroad of the Debtor, granted the following easements during the year 1944:

1—Easement, dated September 14, 1943, from Trustees to United States of America, for chlorinator house, pressure regulating station, water pipe lines and electric power line in connection with Bombing Base at Wendover, Utah. No monetary consideration.

2. Easement, dated February 25, 1944, from Trustees to Henry J. Kaiser Company for gravel conveyor at Radum, California. No monetary consideration.

3—Easement, dated June 26, 1944, from Trustees to American Telephone & Telegraph Company for underground conduit along right of way between Wendover and Barro, Utah. Consideration \$611.18.

4—Easement, dated July 6, 1944, from Trustees to County of Plumas for highway to Keddie, California. No monetary consideration.

5—Easement, dated July 12, 1944, from Trustees to American Telephone and Telegraph Company for underground conduit crossings in vicinity of Barro, Utah. Consideration \$28.60,

Defendant's Exhibit No. 25—(Continued)

6—Easement, dated September 28, 1944, from Trustees to E. I. Lane for roadway at Portola, California. No monetary consideration.

7—Easement, dated October 4, 1944, from Trustees to Oro Loma Sanitary District for sanitary sewer at three locations in the vicinity of San Leandro, California. No monetary consideration.

8—Easement, dated October 30, 1944, from Trustees to State of California for State Highway near Chilcoot, California. Considerations \$51.10.

9—Easement, dated November 2, 1944, from Trustees to State of Nevada for State Highway near Preble, Nevada. No monetary consideration.

10—Easement, dated November 28, 1944, from Trustees to State of Utah for State Highway at Wendover, Utah. No monetary consideration.

11—Easement, dated December 12, 1944, from Trustees to Red River Lumber Co. for underground telephone line, power line, water pipe line and transformers at Mile Post 36.41 on the Northern California Extension, California.

XVII.

During the year 1944 the reorganization plan confirmed by the order of this Court dated October 11, 1943, was placed in effect under the direction of the Reorganization Committee consisting of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, whose designation as members of the Reorganization Committee was approved by said order of October 11, 1943.

Defendant's Exhibit No. 25—(Continued)

By its order of November 27, 1944, this Court among other things directed the revesting of the properties of the Debtor in the Debtor Company, and more particularly, directed the Trustees to execute, acknowledge and deliver to the Debtor Company on or before December 28, 1944, as requested by the Reorganization Committee, a deed substantially in the form attached to said order as Exhibit "A," releasing and transferring to the Debtor Company as of 12:01 a.m. Pacific War Time on December 29, 1944, title to all property, rights and interests of every kind and description held by them as such Trustees. Pursuant to such order and the request of the Reorganization Committee the Trustees executed and acknowledged such a deed and delivered it to the Debtor Company prior to December 28, 1944, thereupon divesting the Trustees of all title to all properties and assets held by them as Trustees in this proceeding and vesting such title to all thereof in the Debtor Company. In exchange for said deed the Trustees received from the Debtor Company an agreement, substantially in the form of Exhibit "D" attached to said order of November 27, 1944, whereby the Debtor Company assumed and agreed to perform all contracts, leases, agreements, liabilities and obligations of the Trustees remaining in effect on December 31, 1944. Paragraph 12 of said order of November 27, 1944, authorized and directed the Trustees to continue their control and operation of the Debtor's business and properties until 12:00 o'clock midnight, Pacific War Time, on

Defendant's Exhibit No. 25—(Continued)

December 31, 1944, at which time all right and duty of the Trustees to possess, control or operate said business and properties should cease. The Trustees did retain control and operation of the Debtor's business and properties until 12:00 o'clock midnight, Pacific War Time, on December 31, 1944, whereupon, as directed by said order, the Trustees ceased to possess, control and operate said business and properties, and all possession, control or operation of said business and properties or any thereof by the Trustees, or either of them, ceased and terminated. Possession, control and operation of all said business and properties were then and thereby transferred to and accepted by the Debtor Company at 12:00 o'clock midnight, Pacific War Time, on December 31, 1944.

At or prior to the end of the year 1944 the Trustees divested themselves of, and transferred and conveyed to and vested in the Debtor Company, all title to and all possession, control and operation of the business and properties theretofore held by the Trustees in this proceeding, all as required by orders of this Court. All duties, obligations, services and responsibilities of the Trustees in this proceeding have been duly and fully performed and completed, save only the execution of any further instruments of conveyance, transfer, substitution or release which may be requested by the Debtor Company in order to implement, consummate, confirm or further evidence the complete and effective transfer to the Debtor Company of all of the business, properties, assets, contracts, agreements, leases, actions, rights

Defendant's Exhibit No. 25—(Continued)
and claims heretofore held by the Trustees in this proceeding.

XVIII.

This proceeding has been pending in this Court continuously since August 2, 1935, and your petitioners have been the duly appointed, qualified and acting Trustees of the properties of the Debtor in this proceeding at all times since their appointment and qualification as such on November 13, 1935. During the intervening period of more than nine years the railroad of the Debtor has been operated by your petitioners under the control and supervision of this Court. Your petitioners have caused to be compiled a summary of the operations of the railroad, business and properties of the Debtor during the pendency of this proceeding. Copies of such summary will be furnished to this Court and to each of the parties to this proceeding upon or prior to the hearing upon this Report and Accounting.

Wherefore, the Trustees pray (1) that their Ninth and Final Report and Accounting and all of their acts and accounts be approved and confirmed; (2) that they be discharged as Trustees, reserving to them, jointly and to each of them separately, and to the survivor of them, the power and authority thereafter to execute and deliver such instruments of conveyance, transfer, substitution or release as may be requested by the Debtor Company from time to time in order to implement, consummate, confirm or further evidence the complete and effective release, transfer and conveyance to the Debtor Com-

Defendant's Exhibit No. 25—(Continued)

pany of all the business, properties, assets, contracts, agreements, leases, actions, rights and claims held by the Trustees in this proceeding, provided that the Trustees shall have the right but shall not be required to submit any such instruments to this Court for approval prior to the execution and delivery thereof, jurisdiction to be reserved by this Court for such purposes; (3) that notwithstanding their discharge the Trustees be authorized at any time upon the request of the Debtor Company to cooperate with the Debtor Company in any and every suit, litigation, proceeding, controversy or compromise in which their cooperation as such Trustees may appear necessary or desirable; (4) that the bonds hertofore given by the Trustees in this proceeding be exonerated; and (5) that such other or different order or orders be made as to the Court may seem meet and proper.

ALLAN P. MATTHEW,

Counsel for T. M. Schumacher and Sidney M. Ehrman, Trustees in Reorganization.

State of California,

City and County of San Francisco—ss.

Sidney M. Ehrman, being first duly sworn, deposes and says that he is one of the Trustees named in and making the foregoing Ninth and Final Report and Accounting by the Trustees of the Property of the Debtor and Petition for Approval of Their Acts and Accounts, for Their Discharge as Trustees and for the Exoneration of their Bonds;

Defendant's Exhibit No. 25—(Continued)

that he has read the foregoing Ninth and Final Report and Accounting and Petition, including the exhibits attached thereto, and knows the contents thereof, and that they are true of his own knowledge.

/s/ SIDNEY M. EHRMAN.

Subscribed and sworn to before me this 30th day of April, 1945.

[Seal] FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT 1

T. M. Schumacher and Sidney M. Ehrman, Trustees in Reorganization of The Western Pacific Railroad Company

Statement of Cash Receipts and Disbursements
January 1, 1944, to December 31, 1944

Cash on hand and in banks January 1, 1944..... \$ 14,435,248.59

Receipts

Agents and conductors	\$28,085,007.26
Foreign roads—Freight traffic balances	12,155,596.96
Foreign roads—Passenger traffic	
balances	909,452.42
Foreign roads—Car service.....	129,340.35
Foreign roads—Freight claim settle-	
ments	399,844.05
Individuals and companies	3,224,856.22
Railway Express Agency, Inc.	219,481.70
United States Government—	
Transportation charges	38,998,547.95
Working fund advances	1,175.09
Hospital fund collections	2,271.75
Railway Express Agency, Inc.—	
Interest on advances	2,130.78
Interest on bank balances, time	
deposits, etc.	1,475.40

Defendant's Exhibit No. 25—(Continued)

Tidewater Southern Railway Co.—		
Principal of Note	508,278.61	
Tidewater Southern Railway Co.—		
Interest on Note	29,649.59	
Deep Creek Railroad Co.—		
Return of cash advances.....	23,935.55	
Standard Realty and Development Co.—		
Return of cash advances	60,000.00	
Central California Traction Co.—		
Return of cash advances	50,000.00	
Sacramento Northern Railway—		
Return of cash advances	170,000.00	
Oakland Terminal Railway—Proportion		
of income and profit and loss.....	18,653.34	
U.S. Government, Railroad		
Retirement Board—Services	24.00	
Cash collected for U.S. War Bonds sold	263,991.88	
Interest on Equipment Trust Funds		
invested in U.S. Government Bonds..	11,750.00	
Collections from various sources in con-		
nection with consumation of the Plan		
of Reorganization		
Reconstruction Finance		
Corporation	7,075,000.00	
Crocker First National Bank of		
San Francisco	1,076,114.20	
Irving Trust Company of New York	982,437.13	94,399,014.23
Total Receipts.....		\$108,834,262.82

Disbursements

Foreign roads—Freight traffic balances	\$21,358,755.75
Foreign roads—Passenger traffic	
balances	1,656,553.80
Foreign roads—Car service traffic	
balances	1,877,187.04
Foreign roads—Freight claim	
settlements	272,744.62
Paychecks and payroll deductions	17,389,876.46
Agents drafts on Treasurer for payment	
of steamship companies' charges and	
other purposes	2,710,272.45
Drafts in settlement of freight claims....	320,209.48
Claim agents drafts	144,728.81
Ticket redemption drafts	122,483.25
Outside agency drafts	56,879.32
Purchase of U.S. Government Savings	
Notes "C"	7,100,000.00

Defendant's Exhibit No. 25—(Continued)

Audited Vouchers, exclusive of payroll deductions as per accompanying statements	35,127,996.71	
Deposited with the Guaranty Trust Company of New York for payment of cash adjustments in connection with exchange of securities at consummation of the Plan of Reorganization	12,681,258.52	\$100,818,946.21
Cash on hand and in banks December 31, 1944	\$	8,015,316.61

Statement of Voucher Payments, Exclusive of Pay Roll Deductions,
January 1st, 1944, to December 31st, 1944

Fuel oil	\$ 2,705,528.91
Coal	319,271.17
Rail (New)	221,041.83
Rail (Relay)	1,788.27
Rail joints	31,078.71
Tie plates	23,880.02
Rail anchors and anti-creepers	8,549.58
Bolts, spikes and nuts	51,470.68
Crossings and other track material	1,791.00
Lock washers	2,817.92
Switch material	59,245.83
Rail bonds	4,279.12
Ballast	181,969.97
Lumber and ties	661,987.15
Culvert pipe	4,236.40
Stand pipe	771.42
Cement	18,977.29
Cross arms	5,588.64
Steel pipe	32,725.85
Wire	13,605.40
Water tanks	1,838.85
Cable	1,985.98
Pumps	8,501.32
Ranges	3,137.01
Smoke jacks	1,272.04
Signal material	4,316.26
Locomotive repair parts	191,464.85
Diesel locomotive repair parts	175,016.45
Lagging	3,107.91
Brass castings	58,580.41
Battery renewals	44,348.80
Iron and steel	86,368.79
Babbitt	7,305.20
Oakite and Okeamo	13,780.78
Tools	73,452.36

Defendant's Exhibit No. 25—(Continued)

Acetylene and oxygen	25,771.30
Solder	1,506.19
Car repair parts	50,171.45
Car wheels and axles	53,135.26
Brake shoes	34,512.60
Burlap	1,857.10
Canvas and duck	5,476.38
Blankets and mattresses	9,266.69
Shop machinery	52,082.79
Roadway machinery	34,238.78
Fusees and torpedoes	50,813.97
Rags and waste	22,214.61
Oil and grease	164,848.14
Chemicals for water treatment	35,225.16
Chemicals for killing weeds	8,118.01
Switch lists and train orders	2,588.46
Tickets	10,374.78
Timecards and time tables	3,968.46
Teletype sets	6,006.80
Dining car and hotel supplies	462,682.77
Hospital services and supplies	148,243.92
Ice, salt, and refrigeration expenses	506,870.07
Central traffic control equipment	643,465.48
Real estate	11,028.39
Fencing	6,234.61
Electrodes	230.63
Winpower electric plants	1,245.58
Steel piling	12,051.34
Ferry slip repair parts.....	1,165.22
Duplicating machine	2,673.69
Purchase of Capital Stock, The Salt Lake City Union Depot and Railroad Company—3000 shares 4% Pre- ferred	300,000.00
Purchase of 4 Diesel electric switching locomotives, Nos. 555 to 558 inc.	311,419.68
Purchase of 10 Insulated box cars	9,500.00
Purchase of Hotel furniture and equipment at Portola...	6,000.00
Purchase of six Diesel electric freight locomotives through conditional sale contract with The Chase Na- tional Bank, New York—25% of certified cost.....	782,820.00
Purchase of U.S. Treasury Savings Notes Series "C" Account Maintenance Fund	1,073,000.00
Account Federal Income Tax Accruals	7,810,000.00
Purchase of U.S. War Bonds sold for cash.....	263,991.88
U.S. War Bonds, undelivered	20,081.25
Tug service for car barges—San Francisco Bay.....	60,427.50
San Francisco Harbor—Rents, tolls and State Belt Ry. switching	175,368.26
Services of express messengers as train baggagemen.....	21,647.59

Defendant's Exhibit No. 25—(Continued)

Oroville shop, bus service for employes.....	9,600.00
Welding service	18,341.25
Contract telegraph service, Western Union	15,587.35
Threlkeld Commissary Co.—Operating deficits.....	129,126.41
Testing rails	9,461.20
Expenses Mexican National Laborers.....	72,222.17
Group Advertising	48,187.37
Repairs, tugs and barges	125,486.85
Foreign cars destroyed	25,896.67
Insurance premiums	200,739.89
Foreign roads, traffic balances	120,086.96
Overcharges refunded U.S. Government	670,313.49
Fire damage U.S. Government Forests	3,386.51
U.S. Government fines	1,168.20
Fire damage, Oroville packing house	5,442.34
Compensation of T. M. Schumacher as Reorganization Trustee	15,000.00
Expenses of T. M. Schumacher as Reorganization Trustee	2,432.64
Compensation of Sidney M. Ehrman as Reorganization Trustee	12,000.00
Compensation of Allan P. Matthew as General Counsel for Reorganization Trustees	18,000.00
New York Office, Salaries, rents and other expenses	34,839.65
Traveling, hotel, automobile, and similar expenses of offi- cers and employes on behalf of The Western Pacific Railroad including all branches of company service approximately 400 individual accounts per month	373,869.30
Handling celery refuse at Terminous	2,241.00
Repairs Business Car No. 101	983.46
Fire hazard reduction U.S. National Forests	16,154.41
Excess mileage of tank cars	24,696.47
Damage claims Greyhound Bus Company	10,000.00
Payments to A—Southern Pacific Company	1,060,413.70
B—Atchison, Topeka and Santa Fe Railway Co.	45,510.71
C—Great Northern Railway Co.	261,964.13
D—McCloud River Railroad Co.	2,968.96
E—The Denver and Rio Grande Western Railroad Co.	1,139,822.94
F—The Salt Lake City Union Depot and Railroad Co.	70,742.50
(For operation of joint facilities, re- pairs to Western Pacific equipment, and joint facility rents)	
advances to subsidiary companies to enable them to meet current obligations including operating expenses,	

Defendant's Exhibit No. 25—(Continued)

taxes, interest, and maintenance of adequate cash working funds		
Alameda Belt Line, Capital expenditures	\$26,665.14	
Operations	68,084.86	94,750.00
Sacramento Northern Railway		220,000.00
Central California Traction Company		48,000.00
Interest—Equipment Trust, Series of 1937		39,375.00
Principal—Equipment Trust, Series of 1937		155,000.00
Interest—Equipment Trust Series of 1941		37,100.00
Principal—Equipment Trust Series of 1941		265,000.00
Interest—Conditional Sale Contract with The Chase National Bank covering six steam freight locomotives		14,335.50
Principal—Conditional Sale Contract with The Chase National Bank covering six steam freight locomotives..		181,080.00
Interest—Conditional Sale Contract with The Chase National Bank covering three Diesel electric freight locomotives		18,333.00
Principal—Conditional Sale Contract with The Chase National Bank covering three Diesel electric freight locomotives		226,800.00
Interest—Conditional Sale Contract with The Chase National Bank covering six Diesel electric freight locomotives		14,633.49
Principal—Conditional Sale Contract with The Chase National Bank covering six Diesel electric freight locomotives		187,200.00
Interest—Trustees Certificates		124,369.54
Principal—Trustees Certificates		300,000.00
Interest on Central California Traction Co. Bonds, viz:		13,500.00
Payment of semi-annual interest due April 1, and October 1, 1944, upon Central California Traction Company 5% First Mortgage Bonds in the face amount of \$270,000, which matured April 1, 1936, are owned by The Western Pacific Railroad Company and are now pledged with and in the possession of Irving Trust Company as Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company, dated as of January 1, 1932, as collateral under said mortgage, being interest from October 1, 1943, to and including September 30, 1944, on said bonds, at the same interest rate as said bonds bore prior to maturity.		
Interest and principal collected on Tidewater Southern Railway Company Note, deposited with Irving Trust Company of New York, Trustee, The Western Pacific Railroad Company, General and principal.....		508,278.61
Refunding Mortgage interest		29,649.59
Crocker First National Bank of San Francisco, and Samuel Armstrong, Trustees, The Western Pacific Railroad		

Defendant's Exhibit No. 25—(Continued)

Company, First Mortgage Deposits in lieu of mortgaged property sold

Safeway Stores, Land in San Francisco 7,189.77

Deposits of rentals collected

Moore Dry Dock Company, Oakland 7,834.79

Advances to the Reorganization Committee 15,987.71

Rentals for general offices and outside agencies 99,752.08

Rental for Oakland waterfront land 2,000.00

Rental for United States tank cars (Milage) 5,112.93

Rental for locomotives 104,049.04

Rental for buses 2,462.31

Taxes, State, County, etc. 1,039,057.21

Taxes, Sales 34,528.40

Federal Income tax collections 2,293,656.51

Federal Transportation tax collections 922,326.01

Payments account of Railroad Retirement Board 1,201,294.17

Payments account of Social Security Board Unemployment Reserves 553,900.00

Payments to contractors account of improvements, etc.

Extension of operators quarters at Pulga 977.00

Oakland commissary 1,238.39

Passenger platform Sacramento 6,068.25

Freight Shed, San Jose 808.90

Roundhouse, and drop table, Oroville 54,820.76

Roundhouse, Elko 41,532.10

Roundhouse, Stockton 12,071.50

Roundhouse, Oakland and new turntable 71,384.17

Freight house, Stockton 14,808.15

Stationery store Oakland 2,567.76

Yard tracks, Portola 44,284.80

Yard Office, Oroville 8,990.69

Painting, Bridges Various 4,220.64

Buildings, Fruitvale, Livermore 1,158.00

Buildings, Oakland 2,332.00

Buildings, various, Eastern Division 31,636.75

Warehouse San Francisco 1,077.00

Alterations, Freight office, San Francisco 4,512.00

Passenger station, Stockton 1,729.00

Packing shed, Thornton 2,531.00

Packing shed, San Jose 11,157.98

Ticket office, Sacramento station 3,516.43

Grading Oroville Yard 2,491.00

Buena Vista 375.00

Herlong 1,500.00

Oakland 1,188.04

San Francisco 11,677.67

Elko Yard 12,203.43

Winnemucca Yard 11,287.12

Defendant's Exhibit No. 25—(Continued)

Payments to contractors account of improvements, etc. (Cont.)

Construction Roadway Oakland Mole	19,107.80
Signal tower, Keddle	4,537.25
Frame dwellings, various points	16,282.11
Depot, Warner	6,394.00
Carmen's house Stockton	845.00
Pipeline, Sacramento Shops	1,233.00
Foundations, Central Traffic Control	19,261.75
Culverts, various points	29,404.90
Roof, Freight Platform, San Francisco	345.37
Section facilities, various points	47,404.25
Station platform, Pleasanton	2,988.58
Frame buildings, Nevada	7,642.38
Bunkhouse, Chilcoot	2,686.00
Depot, Wells	7,043.02
Passing track, Carlin	691.26
Track, San Francisco	1,178.00
Flood gate, Marysville	912.00
Tin shop, Elko	427.18
Trainmaster's office, Salt Lake City	867.61
Toolhouse, Oakland	561.19
Drain, San Francisco Freight house	1,589.45
Rest room, General Store Sacramento	1,523.30
Barrier posts, Oakland	611.57
Operators quarters, Warner	1,424.00
Warehouses, Oakland	61,612.00
Driveway, Pleasanton	807.00
Yard office, San Francisco	8,566.00
Section facilities, San Francisco	16,862.50
Toilet, Stockton Yard	2,350.62
Section facilities, Oakland	25,156.37
Oil house, San Francisco	490.00
Section facilities, Eastern Division	43,286.00
Yard tracks, Elko	25,763.53
Diesel enginehouse, San Francisco	24,000.00
Dispatchers office, Keddle	16,183.71
Passing track Dyke	4,912.00
Transformer house, Portola	595.00
Driveway Oakland Warehouses	6,676.45
Concrete platform, Oroville	5,571.37
Elevator, Sacramento Store	3,170.00
Platform, Decota	3,631.17
Division office, Sacramento	2,952.00
Dwelling, Spring Garden	5,367.75
Interchange office, San Francisco	1,414.50
Garage, Oakland	990.45
Fuel reservoir, Sacramento	4,266.00
Car inspectors building, Stockton	3,357.00
Oil tank, Wendover	7,177.50

Defendant's Exhibit No. 25—(Continued)

Payments to contractors account of improvements, etc. (Cont.)

Construction Repairs Packing sheds, Milpitas.....	671.62
Platform, Sacramento	454.00
Bridge 178.18	24,029.87
Bridge, 363.35	33,579.37
Passenger station, Sacramento	7,529.43
Buildings, Reno	547.25
Freight house and shed, San Francisco	10,471.33
Embankments, Eastern Division	120,700.52
Warehouses, San Francisco	5,188.24
Dock, Oakland Mole	57,224.69
25th St. Wharf, San Francisco.....	67,128.64
Wharf, Stockton	11,398.13
Lumber shed, Sacramento	2,015.00
Hotel, Portola	3,171.00
Freight house, Stockton	5,846.49
Tunnel No. 15	97,748.60
Station, Marysville	17,688.83
Roadway, Crescent Mills	3,953.87
Clearing Slide, Virgilia	15,895.90
Re-arrangement of tracks, Oakland	1,890.00
Roadway, San Jose	713.63
Oakland Commissary	1,324.62
Roadway, David	9,962.19
Roadway, Carboard	2,344.03
Roundhouse, Oroville	11,965.05
Freight house, Winnemucca	1,040.00
Clearing slide, Red Rock	2,153.28
Re-locate carmen's shed, San Francisco	546.83
Onion platform, Stockton	782.65
Yard track, San Francisco	993.88
Roundhouse, Oakland	4,976.50
Loading platform, Stockton	1,819.45
Roadway, Oakland Mole	4,838.40
Freight house, Oroville	1,063.39
Platform, San Francisco.....	576.16
Packing shed, Terminous	15,326.26
Auto platform, San Francisco	750.00
Pipe Line, Senoke Creek	4,757.10
Embankments various locations	17,961.66
Warehouse, Stockton	2,475.00
Dispatchers Circuit, Western Division	1,470.00
Stock yard, Winnemucca	914.98
Pipe Line, Cottonwood Springs	2,309.72
Removing rocks, San Francisco	619.35
Salvaging wire from Sacramento Northern Railway	399.50
Digging drainage ditch, Sacramento	647.50
Drilling well, Jungo	5,360.00
Lighting fixtures, various stations	7,371.00
Harvesting ice crop, Carlin	32,906.81

Defendant's Exhibit No. 25—(Continued)

Payments to contractors account of improvements, etc. (Cont.)

Erection temporary camp, San Francisco	4,241.00
Paving and street work, San Francisco	11,751.79
Oakland	5,718.96
Stockton	7,333.12
Marysville	1,738.10
San Jose	3,503.22
Fitting up city ticket office, San Francisco	540.75

Fees and expenses of financial institutions as Trustees,
Agents, etc., as follows:

The Chase National Bank of New York

Equipment Trust Series "D"

Services in redemption of

certificates\$73.00

Services account of cremation 1.10

Services in execution of assignment.. 75.00

Expenses in execution of assignment 27.00 176.10

The Western Pacific Railroad Company, First Mortgage

Services as Attorney in fact for

Samuel Armstrong, Individual

Trustee200.00

Services as Registrar150.00

Services in execution of release

from Mortgage100.00

Expenses in execution of release

from Mortgage 40.00

Services account register and

transfer of bonds 10.20

Services account authentication

of bonds 26.00

Expenses postage and insurance 12.05 538.25

714.35

Crocker First National Bank, San Francisco, Trustee

The Western Pacific Railroad Company, First

Mortgage

Services as Trustee2,464.50

Services in execution of release from

Mortgage 150.00

Expenses in execution of release from

Mortgage 155.00 2,769.50

Services account safekeeping Sacramento

Northern Railroad Bonds 2,606.74

5,376.24

Irving Trust Company, New York, Trustee

The Western Pacific Railroad Company

General and Refunding Mortgage

Services as Trustee612.50

Expenses as Trustee208.64 821.14

Defendant's Exhibit No. 25—(Continued)

Fees and expenses of financial institutions as Trustees,
Agents, etc. (Cont.)

Services in execution of release from Mortgage	50.00		
Expenses in execution of release from Mortgage	29.32	79.32	900.46

Central Hanover Bank and Trust
Company, New York

Equipment Trust Series of 1937

Services as Trustee	225.00		
Services as Registrar	100.00		
Services account retirement of certificates	193.75		
Services paying interest	46.31	565.06	

Equipment Trust Series of 1941

Services as Trustee	235.00		
Services as Registrar	100.00		
Services account retirement of Certificates	331.25		
Services paying interest	46.38	712.63	1,277.69

Legal services and expenses, exclusive of services of Gen-
eral Counsel for Trustees and his office, and of services
and expenses of the regular legal staff of the Company,
as follows:

Fabian and Clendennin, Salt Lake City, Utah	Services	1,200.00	
	Expenses	.83	1,200.83
Morley, Griswold and Milton J. Reinhart, Elko, Nevada	Services	160.00	
	Expenses	36.32	196.32
Farnsworth and Van Cott, Salt Lake City, Utah	Services	51.00	
	Expenses	1.50	52.50
J. S. Halley, Reno, Nevada	Services		75.00
J. E. Robinson, Reno, Nevada	Services		100.00
George Lalise, Reno, Nevada	Services		50.00
S. C. Young, Quincy, California	Services	75.00	
	Expenses	23.81	98.81
Hinsdale, Otis, Johnson and Ware, Sacramento, California....	Services	2,350.00	
	Expenses	133.62	2,483.62
Neumiller and Ditz, Stockton, California	Services	635.00	
	Expenses	117.98	752.98
Seth Milligan, Gridley, Calif.	Services		25.00

Defendant's Exhibit No. 25—(Continued)

Legal Services and Expenses, etc. (Cont.)

Jesse E. Nichols, Oakland, Calif.	Services	100.00	
	Expenses	14.00	114.00
Hynes, Brower and Ottonello, Oakland, California	Services		200.00
Brown, Rosson, and Gillis, Oakland, California	Services	2,935.00	
	Expenses	51.12	2,986.12
McCutcheon, Thomas, Matthew, Griffiths and Green, San Francisco	Expenses		220.17
Dunne and Dunne, San Francisco	Services	6,375.00	
	Expenses	167.34	6,542.34
Moran and Mielke, San Francisco	Services	750.00	
	Expenses	201.92	951.92
A. C. Wollenberg, San Francisco	Services	475.00	
	Expenses	39.00	514.00
Miscellaneous			2,087,921.13

Total Audited Vouchers\$35,127,996.71

Miscellaneous voucher payments include items of expenditure for the following, among various others:

Gasoline

Memberships in railroad, commercial and civic associations and organizations

Screws, nails, etc.

Postage, telephone, telegraph, electric light and power service and water service

Stationery and printing, blueprints, printers supplies, etc.

Hardware

Stockyard service charges at various points

Lighting supplies, electric supplies and materials

Locomotive repair parts ordinary

Car repair parts ordinary

Track fastenings ordinary

Frogs and switches ordinary

Paints, oils, varnishes and glass

Castings—Steel, iron, brass and bronze

Building materials and supplies

Sand and gravel

Payments to foreign lines (other than those hereinbefore specified for repairs to Western Pacific equipment)

Payments to other lines and terminals for switching

Advertising, miscellaneous

Freight pick-up and delivery service and drayage at various points

Pipe fittings ordinary

Auto supplies and parts

Explosives

Metals for various purposes

Car seals, and various other car and train supplies

Signal materials and supplies ordinary

Defendant's Exhibit No. 25—(Continued)

Furniture

Office Supplies

Services of various companies for checking and handling freight

Track motor cars and parts

Water pumps and parts

Dry goods

Rubber goods

Inspection of lumber, ties, rails and other materials

Repairs to miscellaneous buildings

Fire protection equipment

Freight charges on company material in freight forwarder's pool
shipments

Marine and ship chandlery supplies

Accounting Department

San Francisco, California

Defendants' Exhibit No. 25—(Continued)

EXHIBIT 2

T. M. Schumacher and S. M. Ehrman
Trustees in Reorganization

The Western Pacific Railroad Company—Debtor

Revenues, Expenses and Income
Period January 1, 1944, to December 31, 1944, Inclusive

Month	Total Railway Operating Revenues	Total Railway Operating Expenses	Tax Accruals	Hire of Equip- ment and Joint Facility Rents— Net Debit	Net Railway Operating Income	Other Income (Accruals)	Total Income (Accruals)	Miscellaneous Deductions From Income (Accruals)	Net Income
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
January	\$ 4,177,091.30	\$ 2,380,876.52	\$1,061,266.41	\$ 180,619.36	\$ 554,329.01	\$ 35,903.85	\$ 590,232.86	\$ 32,528.61	\$ 557,704.25
February	2,755,104.81	2,307,457.74	143,692.69	63,720.66	240,233.72	41,205.40	281,439.12	68,241.62	213,197.50
March	4,558,775.54	2,756,181.32	1,104,906.59	171,733.96	525,953.67	46,605.59	572,559.26	50,132.96	522,426.30
April	4,681,363.78	2,508,098.49	1,465,859.79	132,631.21	574,774.29	42,366.45	617,140.74	43,140.72	574,000.02
May	4,654,846.84	2,586,478.10	1,360,098.80	91,676.69	616,593.25	42,312.07	658,905.32	55,849.45	603,055.87
June	3,939,439.05	2,674,229.12	440,527.28	104,652.08	720,030.57	46,772.14	766,802.71	45,182.63	721,620.08
July	3,605,985.91	2,623,915.60	182,169.10	130,738.78	669,162.43	34,505.00	703,667.43	54,491.78	649,175.65
August	4,291,967.85	2,899,031.99	725,399.13	153,598.15	513,938.58	38,716.80	552,655.38	36,955.94	515,699.44
September	5,120,837.60	2,859,702.73	1,287,199.61	201,723.17	772,212.09	38,295.27	810,507.36	50,975.78	759,531.58
October	5,446,573.73	2,936,269.89	1,483,897.75	247,287.72	779,118.37	35,010.85	814,129.22	11,459.17	802,670.05
November	4,961,522.43	2,779,702.91	195,786.07	216,637.28	1,769,396.17	54,866.65	1,824,262.82	42,245.35	1,782,017.47
December	4,656,437.87	2,885,469.49	1,088,328.78	261,433.36	2,597,863.80	29,901.89	2,627,765.69	15,361.41	2,612,404.28
Jan. to Dec., Inclusive....	\$52,849,946.71	\$32,197,413.90	\$8,362,474.44	\$1,956,452.42	\$10,333,605.95	\$486,461.96	\$10,820,067.91	\$506,565.42	\$10,313,502.49

Note: Columns 8 and 9 exclude accruals for deductions from income for interest not being paid by Reorganization Trustees and amortization of discount on First Mortgage Bonds, as follows:

Month	Amount
January	\$ 275,282.91
February	274,335.31
March	275,282.93
April	274,809.10
May	275,282.92
June	274,809.27
July	275,282.92
August	275,282.94
September	274,809.09
October	275,282.92
November	274,809.10
December	275,283.09

Jan. to Dec.,
Inclusive\$3,300,552.50

Italics denote red figures.

Defendant's Exhibit No. 25—(Continued)

EXHIBIT No. 3

T. M. Schumacher and Sidney M. Ehrman,
Trustees in Reorganization of
The Western Pacific Railroad Company

Changes in Capital Accounts Due to Acquisitions of Property,
Improvements and Retirements as reported to the
Interstate Commerce Commission

Period January 1st, 1944, to December 31st, 1944

Year	Month	Acquisitions	Retirals	Net Additions
		Road and Equipment		
1944	January	\$ 395,918.14	\$ 4,969.20	\$ 390,948.94
1944	February	131,231.24	17,183.79	114,047.45
1944	March	226,630.35	35,042.50	191,587.85
1944	April	266,550.07	5,699.88	260,850.19
1944	May	209,179.63	7,425.63	201,754.00
1944	June	340,260.18	11,153.13	329,107.05
1944	July	1,737,506.09	20,870.87	1,716,635.22
1944	August	1,292,370.64	16,127.40	1,276,243.24
1944	September	215,981.78	30,967.46	185,014.32
1944	October	303,027.78	16,475.25	286,552.53
1944	November	795,855.66	79,621.41	716,234.25
1944	December	254,475.78	28,400.03	226,075.75
January 1st to December				
31st, 1944, Incl.		\$6,168,987.34	\$ 273,936.55	\$5,895,050.79

Defendant's Exhibit No. 25—(Continued)

Miscellaneous Physical Property

1944	January	\$ 58.69	\$	\$ 58.69
1944	February	2,662.74	14,059.02	11,396.28
1944	March	22,576.04	.....	22,576.04
1944	April	1,253.74	.....	1,253.74
1944	May	3,241.87	.....	3,241.87
1944	June	32,336.27	.....	32,336.27
1944	July	11.24	.....	11.24
1944	August	354.22	.....	354.22
1944	September	6,838.60	.....	6,838.60
1944	October	5,074.43	1,008.51	4,065.92
1944	November	23,399.80	500.00	22,899.80
1944	December	44.45	3.29	41.16
January 1st to December				
31st, 1944, Incl.		\$ 97,852.09	\$ 15,570.82	\$ 82,281.27

Italics denote red figures.

Investments in Affiliated Companies

Capital Stock

Year	Month	Acquisitions	Retirals	Net Additions
1944	April	\$ 300,000.00	\$	\$ 300,000.00
January 1st to December				
31st, 1944, Incl.		\$ 300,000.00	\$	\$ 300,000.00

Notes

1944	November	\$	\$ 508,278.61	\$ 508,278.61
January 1st to December				
31st, 1944, Incl.		\$	\$ 508,278.61	\$ 508,278.61

Advances

1944	January	\$ 266.93	\$ 888.31	\$ 621.38
1944	February	266.93	23,925.25	23,658.32
1944	March	266.93	230,000.00	229,733.07
1944	April	266.93	.....	266.93
1944	May	266.93	.....	266.93
1944	June	220,266.93	.....	220,266.93
1944	July	266.93	.....	266.93
1944	August	266.93	198.89	68.04
1944	September	266.93	.....	266.93
1944	October	266.93	888.31	621.38
1944	November	266.93	.....	266.93
1944	December	266.93	303,310.86	303,043.93
January 1st to December				
31st, 1944, Incl.		\$ 223,203.16	\$ 559,211.62	\$ 336,008.46
Total Investments in				
Affiliated Companies		\$ 523,203.16	\$ 1,067,490.23	\$ 544,287.07

Defendant's Exhibit No. 25—(Continued)

Other Investments

Capital Stock

1944	October .....	\$	.....	\$	100.00	\$	100.00
January 1st to December		<hr/>					
	31st, 1944, Incl. ....	\$	.....	\$	100.00	\$	100.00

Notes

1944	June	\$	226.21	\$	.....	\$	226.21
1944	September		81.59		.....		81.59
1944	November .....		.....		27.20		27.20
January 1st to December		<hr/>					
	31st, 1944, Incl.	\$	307.80	\$	27.20	\$	280.60
Total Other Investments		\$	307.80	\$	127.20	\$	180.60

Italics denote red figures.

Recapitulation

January to December, 1944, Inclusive

Year	Month	Acquisitions	Retirals	Net Additions
Total Acquisitions				\$6,790,350.39
Total Retirements				1,357,124.80
Grand Total—Net Additions.....				<hr/> \$5,433,225.59 <hr/>

Italics denote red figures.

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANT'S EXHIBIT No. 26

Allan P. Matthew,
1500 Balfour Building,
San Francisco 4, California.

Original Filed May 21, 1945, With Clerk, U. S.
Dist. Court, San Francisco.

In the District Court of the United States, for the
Northern District of California, Southern Di-
vision

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

ORDER APPROVING AND CONFIRMING
NINTH AND FINAL REPORT AND AC-
COUNTING BY THE TRUSTEES OF THE
PROPERTY OF THE DEBTOR, APPROV-
ING AND CONFIRMING THEIR ACTS
AND ACCOUNTS, DISCHARGING THEM
AS TRUSTEES AND EXONERATING
THEIR BONDS

The Ninth and Final Report and Accounting by
T. M. Schumacher and Sidney M. Ehrman, the
Trustees of the properties of the Debtor above
named, and the petition of said Trustees for ap-
proval of their acts and accounts, for their dis-
charge as Trustees and for the exoneration of their

Defendant's Exhibit No. 26—(Continued)

bonds, filed herein on April 30, 1945, came on regularly for hearing on May 21, 1945, and it appearing and the Court finding:

1. That said Trustees have given notice of hearing by mailing and publication as directed by the order of this Court made on April 30, 1945;

2. That the allegations of said Ninth and Final Report and Accounting and of said petition are true;

3. That as directed by the order of this Court made on November 27, 1944, and as requested by the Reorganization Committee, said Trustees executed, acknowledged and delivered to the Debtor Company, prior to December 28, 1944, a deed substantially in the form attached to said order as Exhibit "A," releasing and transferring to the Debtor Company as of 12:01 a.m., Pacific War Time, on December 29, 1944, title to all property, rights and interest of every kind and description held by them as such Trustees, thereupon and thereby divesting the Trustees of all title to all properties and assets held by them as Trustees in this proceeding and vesting such title to all thereof in the Debtor Company;

4. That in exchange for said deed, referred to in the immediately preceding paragraph hereof, said Trustees received from the Debtor Company an agreement, substantially in the form of Exhibit "D" attached to said order of November 27, 1944,

Defendant's Exhibit No. 26—(Continued)

whereby the Debtor Company assumed and agreed to perform all contracts, leases, agreements, liabilities and obligations of the Trustees remaining in effect on December 31, 1944;

5. That as authorized and directed by said order of this Court made on November 27, 1944, said Trustees continued their control and operation of the Debtor's business and properties until 12:00 o'clock midnight, Pacific War Time, on December 31, 1944, whereupon all possession, control and operation of said business and properties by the Trustees ceased and terminated, and possession, control and operation of all said business and properties were transferred to and accepted by the Debtor Company;

6. That at or prior to the end of the year 1944 said Trustees divested themselves of, and transferred and conveyed to and vested in the Debtor Company, all title to and all possession, control and operation of the business and properties theretofore held by the Trustees in this proceeding, all as required by orders of this Court; and

7. That all duties, obligations, services and responsibilities of said Trustees in this proceeding have been duly and fully performed and completed, save only the execution of any further instruments of conveyance, transfer, substitution or release which may be requested by the Debtor Company for the purpose of implementing or consummating the complete and effective transfer to the Debtor Com-

Defendant's Exhibit No. 26—(Continued)

pany of all of the business, properties, assets, contracts, agreements, leases, actions, rights and claims heretofore held by said Trustees in this proceeding.

Now, Therefore, the Court being fully advised in the premises, It Is Hereby Ordered, Adjudged and Decreed:

1. That said Ninth and Final Report and Accounting by said Trustees and all of their acts and accounts alleged and set forth in said Ninth and Final Report and Accounting be and the same are hereby approved and confirmed;

2. That said Trustees be, and they hereby are, discharged, reserving, however, to the Trustees, jointly and to each of them separately, and to the survivor of them, the power and authority hereafter to execute and deliver such instruments of conveyance, transfer, substitution or release as may be requested by the Debtor Company from time to time in order to implement, consummate, confirm or further evidence the complete and effective release, transfer and conveyance to the Debtor Company of all the business, properties, assets, contracts, agreements, leases, actions, rights and claims held by the Trustees in this proceeding; provided, however, that said Trustee shall have the right, but shall not be required, to submit any such instruments to this Court for approval prior to execution and delivery thereof, jurisdiction being hereby reserved by the Court for such purposes; and

Defendant's Exhibit No. 26—(Continued)

3. That notwithstanding their discharge said Trustees be, and they hereby are, authorized, jointly and separately, at any time upon the request of the Debtor Company, to cooperate with the Debtor Company in any and every suit, litigation, proceeding, controversy or compromise in which their cooperation as such Trustees may appear necessary or desirable; and

4. That the bonds heretofore given by said Trustees severally for the faithful discharge of their duties and responsibilities be, and the same hereby are, exonerated, and said Trustees and Fidelity and Deposit Company of Maryland, the surety upon each of said bonds, be and they hereby are released from all liability on said bonds.

Dated: May 21, 1945.

A. F. ST. SURE,
Judge.

[Endorsed]: Filed Feb. 11, 1949.

DEFENDANT'S EXHIBIT No. 28

Allan P. Matthew,
1500 Balfour Building,
San Francisco 4, California.

Filed Feb. 1944

C. W. Calbreath, Clerk

(Original filed Feb. 21, 1944.

With Clerk, U. S. Dist. Court San Francisco.)

In the District Court of the United States, for the
Northern District of California, Southern Di-
vision

No. 26591-S

In the Matter of
THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

ORDER PROVIDING FOR HEARING UPON
PETITION FOR AUTHORITY TO ESTAB-
LISH RESERVE FUND FOR CONTIN-
GENT TAX LIABILITIES

Upon due consideration of the petition of T. M. Schumacher and Sidney M. Ehrman, Trustees of the properties of the Debtor above named, for authority to establish a reserve fund for contingent tax liabilities,

It Is Hereby Ordered as follows:

1. That said petition be and it hereby is set for

hearing before this Court on March 3, 1944, at 10 o'clock a.m.

2. That said Trustees be and they hereby are directed to give notice of the said hearing substantially in the following form:

Legal Notice

In the District Court of the United States, for the
Northern District of California, Southern Division

No. 26591-S

In the Matter of .

THE WESTERN PACIFIC RAIROAD COMPANY,

Debtor.

Notice of Hearing Upon Petition for Authority to
Establish Reserve Fund for Contingent Tax
Liabilities

Notice Is Hereby Given, pursuant to the order of the above-named court, that a hearing will be held before the Honorable A. F. St. Sure, Judge of the above-entitled court, at the Court Room of the said Judge in the United States Post Office and Court House Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California, on March 3, 1944, at 10 o'clock, a.m., upon the petition of T. M. Schumacher and Sidney M. Ehrman, Trustees in Reorganization of The Western Pacific Railroad Company, the Debtor above

named, for authority to establish a reserve fund for contingent tax liabilities.

T. M. SCHUMACHER and
SIDNEY M. EHRMAN,

Trustees in Reorganization of The Western Pacific
Railroad Company.

3. That the said notice be given by mailing prior to the 24th day of February, 1944, a copy of this order and a copy of said petition to the following parties:

1. Crocker First National Bank of San Francisco and Samuel Armstrong.

2. Irving Trust Company, as Trustee under Indenture securing Debtor's General and Refunding Mortgage Bonds.

3. A. C. James Co.

4. Reconstruction Finance Corporation.

5. The Railroad Credit Corporation.

6. The Chase National Bank of the City of New York, as Trustee under Agreement dated May 1, 1929, covering Equipment Trust Certificates.

7. The Western Pacific Railroad Corporation.

8. The Western Pacific Railroad Company.

9. The Western Realty Company.

10. Central Hanover Bank and Trust Company, as Trustee under Agreement dated February 1, 1937, covering Equipment Trust Certificates.

11. Central Hanover Bank and Trust Company,

1994 *Western Pacific R.R. Corp., et al., vs.*

as Trustee under Agreement dated August 1, 1941,
covering Equipment Trust Certificates.

Dated: February 21, 1944.

A. F. ST. SURE,
Judge.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANT'S EXHIBIT No. 29

M. C. Sloss,
Sloss, Turner & Finney,
1300, One Eleven Sutter,
San Francisco, California.

In the District Court of the United States, for the
Northern District of California, Southern Di-
vision

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

ORDER GRANTING PETITION OF INTER-
VENTION OF THE WESTERN PACIFIC
RAILROAD CORPORATION

The petition of The Western Pacific Railroad
Corporation, a corporation, an unsecured creditor
and the sole stockholder of the above-named debtor,
filed herein on December 7, 1939, praying that it be

permitted to intervene for all purposes in the above-entitled proceeding, came on regularly this day for hearing.

The petitioner appeared and was represented by M. C. Sloss and Sloss, Turner & Finney, its counsel. No person appeared in opposition to said petition or made any objection to the granting of the same. Evidence, oral and documentary, was adduced in support of said petition from which it appeared and the Court finds that service of said petition and of notice of the time and place fixed for the hearing of the same by the order of this Court made and filed December 7, 1939, was made upon all persons named in said order, and in accordance therewith; that the allegations of said petition are true, and that good and sufficient cause exists for granting said petition and permitting the intervention sought thereby;

Wherefore, in consideration of the law and the premises, It Is Hereby Ordered that said petition be and the same is hereby granted; that said The Western Pacific Railroad Corporation be and it is hereby granted leave to intervene, for all purposes, in the above-entitled proceeding, and that it be and it is hereby admitted to said proceeding as and constituted a general party therein, with the right, as such party, to receive notice, to file notices, pleadings and other papers, to be heard by testimony or argument, and to take such other action in said proceeding as a party thereto, as it may deem proper,

1996 *Western Pacific R.R. Corp., et al., vs.*

but without prejudice to any action heretofore had or taken in said proceeding.

Dated: December 11, 1939.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 30

Original Filed Mar. 18, 1946.

With Clerk, U. S. Dist. Court, San Francisco.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 26591-S

In the Matter of
THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

PETITION OF REORGANIZATION COMMITTEE FOR APPROVAL OF THEIR EXPENSES AND FOR A FINAL ORDER DISCHARGING THE COMMITTEE AND TERMINATING THE PROCEEDINGS

Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the members of the Reorganization Committee designated to put into effect and carry out the plan of reorganization of The Western

Defendants' Exhibit No. 30—(Continued)

Pacific Railroad Company, debtor above named, hereby represent to the Court and petition as follows:

1. The designation of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, petitioners herein, as members of the Reorganization Committee of The Western Pacific Railroad Company, was approved by this Court by order entered October 11, 1943, confirming the plan of reorganization of said Company, and petitioners were directed to put into effect and carry out the plan of reorganization and the orders of the Court relative thereto under and subject to the supervision and control of the Court.

2. Pursuant to said order, petitioners, as such Reorganization Committee, proceed to carry out and put into effect the plan of reorganization under the supervision and control of the Court. By a report filed November 5, 1943, petitioners reported to the Court as to the selection of officers and counsel, designation of mailing address and adoption of by-laws for the Reorganization Committee; and by various petitions herein and testimony at hearings before the Court, petitioners have from time to time reported to the Court as to the various steps taken in carrying out and putting into effect the plan of reorganization.

3. By an order entered November 27, 1944, this Court fixed the date for the consummation of the plan of reorganization, directed the revesting of the

Defendants' Exhibit No. 30—(Continued)
 properties of the debtor in The Western Pacific Railroad Company and authorized and directed the carrying out of the plan. Pursuant to the provisions of said order:

(a) The Certificate of Amendment to the Articles of Incorporation of The Western Pacific Railroad Company was, on December 22, 1944, filed with the Secretary of State of the State of California, and subsequently copies thereof were filed, as required by law, with the Secretaries of State of Nevada and Utah and in the several counties of the States of California, Nevada and Utah in which the railroad and properties of the debtor are located;

(b) T. M. Schumacher and Sidney M. Ehrman, Trustees in reorganization, continued their operation and control of the business and properties of the railroad company until twelve (12) o'clock midnight, December 31, 1944, and thereupon the control and operation of said business and properties by such Trustees ceased and The Western Pacific Railroad Company resumed the control and operation of its business and properties;

(c) T. M. Schumacher and Sidney M. Ehrman, Trustees in reorganization, executed, acknowledged and delivered to The Western Pacific Railroad Company the deed provided for in paragraph 4 of the order entered November 27, 1944;

(d) Crocker First National Bank of San Francisco and Samuel Armstrong, as Trustees under the First Mortgage, dated June 26, 1916, executed by The Western Pacific Railroad Company to First

Defendants' Exhibit No. 30—(Continued)

Federal Trust Company and Henry E. Cooper, Trustees (Crocker First National Bank of San Francisco and Samuel Armstrong, Successor Trustees), executed, acknowledged and delivered to The Western Pacific Railroad Company the deed of release and satisfaction of mortgage described in paragraph 5 of said order and performed all other acts directed to be performed by them in said paragraph 5;

(c) Irving Trust Company of New York, as Trustee under the General and Refunding Mortgage, executed by The Western Pacific Railroad Company February 29, 1932, as of January 1, 1932, to the Chase National Bank of the City of New York, Trustee (Irving Trust Company, Successor Trustee), executed, acknowledged and delivered to The Western Pacific Railroad Company the deed of release and satisfaction of mortgage described in paragraph 6 of said order and performed all other acts directed to be performed by them in said paragraph 6;

(f) The Western Pacific Railroad Company and its officers executed and delivered the Agreements and Indentures described in paragraph 8 of said order;

(g) The Western Pacific Railroad Company has assumed obligations and agreed to perform contracts, leases and agreements as provided in paragraph 9 of said order, and has made payments in various amounts of expenses and costs of administration of this proceeding, allowances, and other

Defendants' Exhibit No. 30—(Continued)
rentals, costs and expenses as provided in paragraph 10 of said order;

(h) The Western Pacific Railroad Company, on December 29, 1944, executed, issued and delivered, or caused to be made available for delivery, to the holders of the Company's existing First Mortgage Bonds and to the Company's secured creditors the new securities of the reorganized Company and made payments in cash to said bondholders and secured creditors, all in accordance with and as provided in paragraph 11 of said order;

(i) Pursuant to the provisions of paragraph 14 of said order, the Reorganization Committee caused to be prepared, published and mailed a notice to the holders of First Mortgage Bonds and secured notes of The Western Pacific Railroad Company, and in all other respects have put into effect and carried out the plan of reorganization and the orders of this Court relative thereto.

4. Pursuant to the arrangements made by the Reorganization Committee with Guaranty Trust Company of New York for the services of said Company as Depositary and Exchange Agent, and the letter of instructions from The Western Pacific Railroad Company relating to the deposit and exchange of securities (all as reported to this Court at a hearing on November 27, 1944) said Guaranty Trust Company of New York has made substantial and satisfactory progress in effecting the delivery and exchange of securities and the payment of cash, as directed in paragraph 11 of said order entered

Defendants' Exhibit No. 30—(Continued)

November 27, 1944, and will continue to act in carrying out such directions. Said Guaranty Trust Company of New York has reported to petitioners the securities and cash delivered and exchanged to the close of business on January 31, 1946, and the securities and cash remaining to be delivered. A copy of the report of said Guaranty Trust Company is annexed hereto as Exhibit "A."

5. The available net income of the debtor and its subsidiaries for the years 1939 to 1943, inclusive, as determined and found by this Court by order filed September 25, 1944, has been applied by The Western Pacific Railroad Company as directed in ordering paragraphs 5 and 6 of said order. Pursuant to ordering paragraph 17 of the order of this Court filed November 27, 1944, The Western Pacific Railroad Company has determined and applied the available net income of the Company for the calendar year 1944 in accordance with the provisions of subdivision L of the plan of reorganization and the provisions of said paragraph 17.

6. T. M. Schumacher and Sidney M. Ehrman, Trustees in reorganization, rendered their final account to this Court on April 30, 1945, and petitioned for their discharge and the release of their sureties. By order of this Court filed May 21, 1945, the accounts of said Trustees were approved, the Trustees were discharged and their sureties were exonerated and released.

7. Appeals were taken to the Circuit Court of

Defendants' Exhibit No. 30—(Continued)

Appeals for the Ninth Circuit by The Railroad Credit Corporation and by The Western Pacific Railroad Corporation from certain provisions of this Court's order filed September 14, 1944, construing the plan of reorganization in various respects and reconciling inconsistencies therein. Said appeals were argued on July 31, 1945, and on December 7, 1945, the rulings from which appeals were taken were affirmed by said Circuit Court of Appeals.

8. By order entered herein May 21, 1945, this Court made allowances of compensation to various parties in interest and their counsel (other than the Reorganization Committee and its counsel) and authorized and directed The Western Pacific Railroad Company to pay forthwith each and all of the allowances so made and said allowances were thereafter duly paid by said Company as directed in said order.

9. By order entered herein December 10, 1945, this Court made allowances to Whitman, Ransom, Coulson & Goetz, and to Pillsbury, Madison and Sutro, as counsel for the Reorganization Committee, and authorized and directed The Western Pacific Railroad Company to pay forthwith said allowances, and said allowances have been paid in full by said Company pursuant to said order.

10. By order filed herein October 23, 1944, this Court made an allowance in the aggregate amount of \$197,111.23 for certain expenses incurred and to be

Defendants' Exhibit No. 30—(Continued)

incurred in connection with the proceedings and plan of reorganization by the Reorganization Committee (exclusive of the fees and expenses of the Committee's counsel). Of said allowance, \$60,638.48 was ear-marked to provide for a contingent tax liability if payment thereof should be required, and \$136,472.75 was allowed for other expenses of the Reorganization Committee without limitation as to individual amounts with respect to component items. Said order also directed the Trustees of the debtor's estate to reimburse the Reorganization Committee and its officers and members out of the debtor's estate for certain expenses theretofore incurred by them in the aggregate amount of \$3,144.00, the detail of which was submitted to the Court upon the hearing, and provided that further payments of the actual and reasonable expenses of the Reorganization Committee (whether incurred before or after the date of said order) should be made out of the debtor's estate by the Trustees thereof so long as said Trustees were in control of the same, and thereafter by the reorganized company in accordance with the procedure directed in said order. Said order provided further that all further payments and advances to the Reorganization Committee under the provisions of the order should be subject to final approval and allowance by the Court at such time or times, or upon such showing as the Court may direct. There is submitted herewith and made a part hereof as Exhibit "B" a summary of the expenses of the Reorganization Committee, its officers and members, incurred in carrying out and

Defendants' Exhibit No. 30—(Continued)

putting into effect the plan of reorganization under the supervision and control of this Court (exclusive of the fees and expenses of the Committee's counsel). The detail of these expenses will be submitted at the hearing upon this petition. It is not anticipated that there will be any further expenses chargeable to the Committee, although provision should be made in the order upon this petition for such expenses and for the contingency of the assertion of the tax liabilities referred to above or other items not presently known. The expenses shown in Exhibit "B" were necessarily incurred by the Reorganization Committee, its officers and members, in carrying out and putting into effect the plan of reorganization and the Committee believes that said expenses were in every case reasonable in amount and within the allowance authorized by the order of this Court entered October 23, 1944.

Wherefore, your petitioners pray for an order of this Court

1. Determining that the plan of reorganization of The Western Pacific Railroad Company has been carried out and put into effect by petitioners as the Reorganization Committee in this proceeding in accordance with the provisions of the plan of reorganization and the orders and directions of this Court;

2. Approving and allowing the payments and advances to the Reorganization Committee as set forth in Exhibit "B" annexed hereto;

Defendants' Exhibit No. 30—(Continued)

3. Providing that The Western Pacific Railroad Company shall reimburse, indemnify and hold harmless the members of the Reorganization Committee, or any person employed by them, against any loss or expense arising out of or in connection with carrying out and putting into effect in good faith the plan of reorganization, including without limitation of the generality of said provision the contingent tax liability described in the order of the Interstate Commerce Commission of September 7, 1944, and allowed in the order of this Court entered October 23, 1944;

4. Discharging petitioners as members of the Reorganization Committee of The Western Pacific Railroad Company;

5. Terminating these proceedings, subject to such reservations of jurisdiction as may be appropriate, except as otherwise provided in the order of this Court entered May 21, 1945, discharging the Trustees in reorganization; and

6. Granting such other and further relief as may be proper in the premises.

Respectfully submitted,

FELIX T. SMITH,

PILLSBURY, MADISON AND
SUTRO.

WHITMAN, RANSOM,
COULSON & GOETZ,

Counsel for petitioners.

Defendants' Exhibit No. 30—(Continued)

State of New York,
County of New York—ss.

Robert E. Coulson, being duly sworn, deposes and says:

That he is a member of the Reorganization Committee of The Western Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

ROBERT E. COULSON.

Sworn to before me this 5th day of March, 1946.

/s/ BEATRICE C. CUNNINGHAM,
Notary Public,
New York County.

Commission expires March 30, 1946.

Defendants' Exhibit No. 30—(Continued)

EXHIBIT "A"

Report of Securities Surrendered, Securities Issued, Cash Disbursed and Securities to Be Surrendered and Securities and Cash to Be Disbursed Thereagainst, as of the Close of Business January 31, 1946, Under The Western Pacific Railroad Company Plan of Reorganization Effective as of January 1, 1939

Securities of The Western Pacific Railroad Company Issued and Cash Disbursed

Securities Surrendered	Principal Amount	Principal Amount of General Mtge. 4½% Income Bds. Ser. "A" Due 1/1/2014		Principal Amt. First Mtge. 4% Bonds Ser. "A" Due 1/1/1974		Shares of Pfd. Stk. Ser. "A"		Shares of Common Stock		Special Cash Payment	Cash Adjustment on Gen. Mtge. 4½% Income Bd. Ser. "A"	Cash Adjustment on Pfd. Stk. Ser. "A"	Cash Adjustment on Common Stock
		Fully Reg. Bonds	Bearer Scrip			Full Shares	Bearer Scrip 5ths	Full Shares	Bearer Scrip 100ths				
The Western Pacific Railroad Company First Mortgage 5% Gold Bonds due March 1, 1946, Fully Reg. and with Cpn. due 3/1/34 and s/c/a or affidavit & indemnity agreement for missing coupons	\$48,802,000	\$19,512,900	\$ 7,900			292,735	385	227,149	756,340		\$4,392,180.00	\$4,629,357.87	\$2,051,148.21
Ditto with Cpn. due 9/1/35 and s/c/a	10,000	4,000				60	33	560			900.00	948.60	302.04
Coupons due 3/1/34 and 9/1/34 detached from \$10,000 principal amount of The Western Pacific Railroad Company First Mtge. 5% Gold Bonds due 3/1/46	500						8	740					78.66
Claim of Reconstruction Finance Corporation													
The Western Pacific Railroad Company 3% Certificates of Indebtedness due 12/1/1939	10,000,000												
The Western Pacific Railroad Company Notes													
due 3/ 1/35	699,000												
due 6/29/35	734,584												
due 8/ 1/35	136,045												
due 8/30/35	1,293,440												
due 3/25/36	99,931												
The Western Pacific Railroad Company Gen. & Ref. Mtge. Bonds Ser. "A" dated 1/1/32 due 1/1/57	8,750,000												
The Western Pacific Railroad Company Gen. & Ref. Mtge. Bonds Ser. "B" dated 7/1/32 due 1/1/57	2,000,000	1,185,200		\$10,000,000	17,778			15,788		266,670.00	281,070.18	142,092.00	
Claim of the Railroad Credit Corporation													
The Western Pacific Railroad Company Notes													
due 2/28/34	1,303,000												
due 5/24/35	1,293,439												
The Western Pacific Railroad Company Gen. & Ref. Mtge. Bonds Ser. "A" dated 1/1/32 due 1/1/57	2,000,000												
The Western Pacific Railroad Company Gen. & Ref. Mtge. Bonds Ser. "B" dated 7/1/32 due 1/1/57	2,000,000	154,000	80.00		2,416	2	34,988			\$ 72.00	34,668.00	38,203.28	314,892.00
Claim of A. C. James Company													
The Western Pacific Railroad Company Notes													
due 3/28/35	4,504,000												
due 3/28/35	347,000												
due 5/31/35	148,800												
The Western Pacific Railroad Company Gen. & Ref. Mtge. Bds. Ser. "A" dated 1/1/32 due 1/1/57	4,249,500	163,600	80.00		2,567			37,635		100.00	36,828.00	40,584.27	338,715.00
Refund to the Company on 4,400 shs. of common stock which will not be issued													39.60
Total		\$21,019,700	\$8,060.00	\$10,000,000	315,556	387	315,601	757,640	\$172.00	\$4,731,246.00	\$4,990,164.20	\$2,847,267.51	

Defendants' Exhibit No. 30—(Continued)

State of New York,
County of New York—ss.

Robert E. Coulson, being duly sworn, deposes and says:

That he is a member of the Reorganization Committee of The Western Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

ROBERT E. COULSON.

Sworn to before me this 5th day of March, 1946.

/s/ BEATRICE C. CUNNINGHAM,
Notary Public,
New York County.

Commission expires March 30, 1946.

Defendants' Exhibit No. 30—(Continued)

EXHIBIT "A"—(Continued)

Payment of Interest and Dividends on the Western Pacific Railroad Company Securities Issued

Interest Due for the Year 1944 on General Mtge. 4½% Income Bonds Ser. "A" Due 1/1/2014		Dividends on Preferred Stock Series "A"		Dividends on Common Stock	
Paid on Bonds issued on exchanges	\$5,836.50	Paid on Full Shares of Stock issued on exchanges	\$4,110.00	Paid on Full Shares of Stock issued on exchanges	\$1,828.50
Paid to City Bank Farmers Trust Com- pany for Interest on Bonds represented by Outstanding Scrip	148.50	Paid to City Bank Farmers Trust Com- pany for dividends on Full Shares represented by Outstanding Scrip	133.75	Paid to City Bank Farmers Trust Com- pany for Dividend on Full Shares rep- resented by Outstanding Scrip	756.75
				Paid to Company for Dividend on 4,400 shares which will not be issued	6.60
Total	\$5,985.00		\$4,243.75		\$2,591.85

The Western Pacific Railroad Company Securities and Cash to Be Disbursed

Securities to Be Surrendered	Principal Amount	Principal Amount of 4½% General Mtge. Income Gold Bonds Ser. "A" Due 1/1/2014	Shares of Pfd. Stk. Ser. "A"	Shares of Common Stock	Cash Adjustment on Gen. Mtge. 4½% Income Gold Bds. Ser. "A" Due 1/1/2014	Cash Adjustment on Preferred Stock Ser. "A"	Cash Adjustment on Common Stock
The Western Pacific Railroad Company 1st Mtge. 5% Gold Bonds due 3/1/46	(Approximately) (9/10ths of 1%) \$478,100 (which percentage) (applies to the) (securities to) (be issued)	\$191,240	2,868-6/10ths	2,232-727/1000ths	\$43,029.00	\$45,352.42	\$20,094.39
To be delivered to The Railroad Credit Corporation				437			3,933.00
Total		\$191,240	2,868-6/10ths	2,669-727/1000ths	\$43,029.00	\$45,352.42	\$24,027.39
		Interest to Be Disbursed on General Mtge. 4½% Income Gold Bonds Ser. "A" Due 1/1/2014 (*)\$6,685.00	Dividends to Be Disbursed on Preferred Stock Series "A" (*)\$10,770.00		Dividends to Be Disbursed on Common Stock (*)\$6,053.32		

(*) These balances include funds which are to be paid to City Bank Farmers Trust Company, scrip agent, on bonds, full shares of Preferred Stock, Series "A" and Common Stock issued by them against the combination of scrip certificates.

Defendants' Exhibit No. 30—(Continued)

EXHIBIT "B"

The Western Pacific Railroad Company
Summary of Expenses of
Reorganization Committee

	Amounts Estimated	Amounts Paid to Date
1. Charges and expenses of Trustees, Registrar and other agents in connection with issuance and exchange of securities	\$ 36,625.00	\$25,515.46
2. Charges of Trustees, Registrar and other agents in connection with exchange of temporary securities for definitives	19,700.00	9,536.57
3. Charges and expenses of Trustees under previously existing mortgages	11,564.50	6,677.59
4. Statutory fees in connection with mortgages	3,500.00	2,715.66
5. Statutory fees in connection with amendment of articles of incorporation	962.50	12.45
6. Stock Exchanges' listing fees	13,350.00	12,834.00
7. Cost of engraving and printing new securities	14,470.75	8,182.31
8. Cost of printing new mortgages, Reorganization Committee record and other documents	6,500.00	15,605.96
9. Traveling and other expenses of Reorganization Committee and their agents (other than Counsel)	8,000.00	3,834.16
10. Miscellaneous	21,800.00	2,664.68
Total, exclusive of amount for contingent tax liabilities	\$136,472.75	\$87,578.84
11. Amount for contingent tax liabilities	60,838.48	
Total authorization under Court Order filed October 23, 1944	\$197,111.23	

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 31

Original filed Mar. 18, 1946,

With Clerk, U. S. Dist. Court, San Francisco.

In the District Court of the United States for the
Northern District of California, Southern Division.

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

ORDER PROVIDING FOR HEARING UPON
PETITION OF REORGANIZATION COMMITTEE FOR APPROVAL OF THEIR EXPENSES AND FOR A FINAL ORDER DISCHARGING THE COMMITTEE AND TERMINATING THE PROCEEDINGS

Upon due consideration of the petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the duly constituted Reorganization Committee designated to carry out the plan of reorganization of The Western Pacific Railroad Company, for an order approving their expenses, discharging the Committee and terminating the proceedings,

It Is Hereby Ordered as follows:

1. That said petition be and it hereby is set for hearing before this Court on March 28, 1946, at 10 o'clock a. m.

2. That said Reorganization Committee be and they hereby are directed to give notice of the said hearing substantially in the following form:

Legal Notice

In the District Court of the United States for the
Northern District of California, Southern Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

NOTICE OF HEARING UPON PETITION OF
REORGANIZATION COMMITTEE FOR
APPROVAL OF THEIR EXPENSES AND
FOR A FINAL ORDER DISCHARGING
THE COMMITTEE AND TERMINATING
THE PROCEEDINGS

Notice Is Hereby Given, pursuant to the order of the above-named Court, that a hearing will be held before the Honorable A. F. St. Sure, Judge of the above-entitled Court, at the Court Room of the Court House Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California, on March 28, 1946, at 10 o'clock a.m. upon the petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the duly constituted Reorganization Committee designated to carry out the plan of reorganization of The Western

Pacific Railroad Company, for approval of their expenses and for a final order discharging the Committee and terminating the proceedings.

Whitman, Ransom, Coulson & Goetz
Counsel for the Reorganization Committee
of
The Western Pacific Railroad Company

3. That the said notice be given by mailing or delivering prior to the 20th day of March, 1946, a copy of this order and copy of said petition, together with copies of the Exhibits submitted therewith, to the following parties:

1. Crocker First National Bank of San Francisco and Samuel Armstrong.
2. Irving Trust Company.
3. A. C. James Co.
4. Reconstruction Finance Corporation.
5. The Railroad Credit Corporation.
6. The Chase National Bank of the City of New York.
7. The Western Pacific Railroad Corporation.
8. The Western Pacific Railroad Company.
9. The Western Realty Company.
10. Allan P. Matthew, as counsel for the Reorganization Trustees.

11. The Institutional Bondholders Committee
(Cravath, Swaine & Moore, counsel).

12. T. M. Schumacher, Esq.

13. Sidney M. Ehrman, Esq.

14. Guaranty Trust Company of New York.

Dated, March 18, 1946.

/s/ A. F. ST. SURE.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 32

Original Filed Mar. 28, 1946.

With Clerk, U. S. Dist. Court, San Francisco.

In the District Court of the United States for the
Northern District of California, Southern Di-
vision.

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

FINAL ORDER

The petition filed March 18, 1946, by Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the duly constituted Reorganization Committee designated to carry out the plan of reorganization of The Western Pacific Railroad Company above

Defendants' Exhibit No. 32—(Continued)
named, for an order approving their expenses, discharging the Committee and terminating the proceedings duly came on to be heard on March 28, 1946, and was heard and has been submitted.

The Court being fully advised in the premises finds that notice of the hearing upon said petition has been given as prescribed by the order of this Court dated and filed March 18, 1946, and that all of the allegations and representations contained in the petition are true. The Court further finds and concludes:

(a) All of the business, assets and property constituting the debtor's estate of every kind and character, real, personal and mixed, and all of the right, title and interest therein of T. M. Schumacher and Sidney M. Ehrman, as Trustees in Reorganization, vested in and became the absolute property of The Western Pacific Railroad Company on December 29, 1944, free and clear of all rights, claims, interests, liens and encumbrances of the former stockholders and creditors of the debtor company and all other persons, except as otherwise provided and directed in the order of this Court in this proceeding dated and entered November 27, 1944; and The Western Pacific Railroad Company is released and discharged forever from all of its debts and liabilities existing on or before December 28, 1944, whether or not the same have been presented and allowed in these proceedings, and said reorganized Company is free and clear of all such rights, claims, interests, liens, encumbrances, debts, obligations and

Defendants' Exhibit No. 32—(Continued)

liabilities, except as otherwise expressly provided in said order.

(b) The plan of reorganiaztion of The Western Pacific Railroad Company, which was duly confirmed by order of this Court dated and entered October 11, 1943, has been fully and properly carried out and put into effect in accordance with the terms and provisions of said plan and the orders of this Court heretofore entered in this proceeding; all acts and things required by the order of this Court dated and entered November 27, 1944, to be done or performed in order to consummate said plan, have been properly done or performed; the exchange of more than 99% of the principal amount of securities of the reorganized company has been effected in accordance with the plan of reorganization and the orders of this Court; and adequate and proper arrangements have been made for the exchange of the remainder of said securities.

(c) The reasonable and necessary expenses of the Reorganization Committee in carrying out and putting into effect the plan of reorganization, as disclosed by Schedule "B" annexed to the petition for this order, filed by said Committee and supported by evidence introduced at the hearing upon said petition, exclusive of the fees and expenses of the attorneys for said Committee, which have heretofore been approved and allowed by order of this Court filed December 10, 1945, are within the maximum limits approved by the Interstate Commerce

Defendants' Exhibit No. 32—(Continued)

Commission and authorized by this Court by order filed October 23, 1944, and should be finally approved and allowed.

(d) Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, members of the duly constituted Reorganization Committee, have fulfilled their functions, faithfully performed their duties as members of the Reorganization Committee and now have no further duties and should be discharged.

(e) The plan of reorganization having been carried out and put into effect in accordance with the terms of the plan and the orders of this Court, a final decree should be entered in this cause, subject only to the reservations of the jurisdiction hereinafter made in this decree.

Now, Therefore, it is hereby Ordered, Adjudged and Decreed:

1. That these proceedings be and they hereby are terminated subject only to the reservations of jurisdiction hereinafter made by the Court in this order, and the reservations of jurisdiction contained in the order of this Court discharging the Trustees of the Debtor's estate, dated and entered May 21, 1945.

2. That the expenses incurred by the Reorganization Committee in consummating, carrying out and putting into effect the plan of reorganization, as shown by the summary which is attached as Exhibit "B" to the petition for this order, filed by the Reorganization Committee, are hereby in all respects finally approved and allowed.

Defendants' Exhibit No. 32—(Continued)

3. That the actions of the Reorganization Committee in putting into effect and carrying out the plan of reorganization and the orders and directions of this Court relative thereto, are hereby approved, ratified and confirmed.

4. That Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the members of the Reorganization Committee herein, be and each of them is hereby discharged and relieved from all further duties herein.

5. That the order of this Court dated and entered November 27, 1944, in this proceeding shall remain in full force and effect in so far as said order has not been fully carried out.

6. All persons, firms, and corporations whatsoever, and wheresoever situated, located or domiciled, are hereby perpetually restrained and enjoined from instituting, prosecuting, or pursuing, or attempting to institute, prosecute or pursue, any suit or suits or proceedings in law or in equity, or otherwise, against The Western Pacific Railroad Company, or against the successors or assigns of said Company, or against any of the assets or property of said Company or its successors or assigns, directly or indirectly, on account of or based upon any right, claims or interest of any kind or nature whatsoever which any such person, firm or corporation may have had in, to or against the Debtor, or any of its assets or properties, on or before Decem-

Defendants' Exhibit No. 32—(Continued)

ber 28, 1944 (except as specifically provided for or permitted by prior order of this Court), and from interfering with, attaching, garnishing, levying upon, enforcing liens against or upon, or in any manner whatsoever disturbing any portion of the property, real, personal, or mixed, of any kind or character, now or hereafter belonging to or being in the possession of said Company, and from interfering with or taking steps to interfere with said Company, its officers and agents, or the operation of the lines of railroad or properties or the conduct of the business of said Company, by reason or on account of any obligation or obligations incurred by the Debtor or by the Trustees of the Debtor's estate on or before December 28, 1944 (except as specifically provided for or permitted by prior order of this Court), and all such persons, firms and corporations are also hereby restrained and enjoined from prosecuting against the Reorganization Committee, or any of them, their agents or attorneys, or against the Trustees of the Debtor's estate, or either of them, their agents or attorneys, or against the said Company, its agents or attorneys, any suit or proceeding arising out of, or based on, any act or acts done or omitted to be done in putting into effect and carrying out the plan of reorganization or any order of this Court entered in these proceedings.

7. The Western Pacific Railroad Company is hereby ordered and directed to reimburse, indemnify

Defendants' Exhibit No. 32—(Continued)

and hold harmless the members of the Reorganization Committee, or any of them, or any person employed by them, against any loss or expense arising out of or in connection with carrying out and putting into effect in good faith the plan of reorganization, including, without limitation of the generality of the foregoing, the contingent tax liability described in the order of the Interstate Commerce Commission of September 7, 1944, and allowed in the order of this Court entered October 23, 1944.

8. The Western Pacific Railroad Company is hereby directed to give notice of the entry of this final order by mailing, postage prepaid, a copy of this order to the Trustees of the debtor's estate, the Reorganization Committee, each party of record in the reorganization proceedings before this Court or the Interstate Commerce Commission (or the counsel for each such party), and to cause promptly to be published a notice of the entry of this final order, setting forth in said notice the complete text of this order as certified by the clerk of this Court, such publication to be made once in each of the following: A daily newspaper of general circulation in the City of San Francisco, California; a daily newspaper of general circulation in the City of New York, New York; and a daily newspaper of general circulation in the City of Chicago, Illinois. Proof of such service and publication shall be filed by said Company with the Clerk of this

Defendants' Exhibit No. 32—(Continued)

Court within thirty days after the completion of the same.

9. The Court hereby reserves jurisdiction to take such further proceedings as may be proper or necessary to enforce and make effective any direction or other provision contained in the order of this Court, filed November 27, 1944, in this proceeding, to enforce and make effective the terms and provisions of this final decree and, if necessary, to give instructions to the Western Pacific Railroad Company, upon application by said Company, with respect to carrying out the provisions of said order filed November 27, 1944, in this proceeding, to ensuch further proceedings as may be proper or necessary in connection with any appeal or appeals prosecuted from any order of this Court, in this proceeding; and to take such further proceedings as may be necessary or proper in connection with any expenses or liabilities within the provisions of the order of this Court filed October 23, 1944, or otherwise, which may hereafter be asserted against the Reorganization Committee, its agents or attorneys, in connection with carrying out and putting into effect the plan of reorganization.

10. Except as hereby specifically provided in the reservations of jurisdiction set forth in Paragraph 9 above, and except as provided in the reservations of jurisdiction of the order of this Court, filed May 21, 1945, discharging the Trustees of the debtor's estate, the reorganization proceedings in

Defendants' Exhibit No. 32—(Continued)
this Court, entitled in the Matter of the Western
Pacific Railroad Company, Debtor, No. 26591-S, are
hereby terminated and the case is closed.

Dated: March 28, 1946.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 33

Reorganization Plan
of

The Western Pacific Railroad Company
(233 I.C.C. 409)

“P. The existing securities of the debtor shall
be treated as follows:

* * *

c' 5. The A. C. James Company shall receive in
respect of its claim in the principal amount of
\$4,999,800, together with \$1,249,950 of the interest
accrued and unpaid thereon to January 1, 1939,
\$163,724 of income-mortgage 4½-percent bonds,
series A; \$256,756 of 5-percent preferred stock,
series A; and 37,635 shares of common stock, being
an amount of common stock which bears to the
amount of common stock allotted to the claim of
the Railroad Credit Corporation the same propor-
tion that the principal amount of general and re-

funding mortgage bonds of the debtor held by the A. C. James Company as collateral for said claim, bears to the principal amount of such bonds held by the Railroad Credit Corporation as collateral for its claim.”

(233 I.C.C. at 452)

Summary of result of foregoing treatment of A. C. James Company's claim:

Amount of Claim:

Principal	\$4,999,800
Interest to January 1, 1939	1,249,950
Total Claim	<u>\$6,249,750</u>

Securities received:

Income Bonds	\$ 163,724
Preferred Stock (at par)	256,756
Common Stock (37,635 shares at \$62)*	<u>2,333,370</u>
Total Receipts	<u>2,753,850</u>
Deficiency	<u><u>\$3,495,900</u></u>

* The price the Commission used in allocating common stock to Railroad Credit Corporation on account of its claim.

. [Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 34

Memorandum for Mr. Matthew

From Mr. Enersen

March 1, 1944

For Hearing March 3d

The Western Pacific Railroad Company
Reorganization

Contingent Tax Liability Reserve Fund

Memorandum for Hearing

March 3, 1944

Statement to the Court

1. Notice: Notice has been given as required by the order for hearing and an affidavit to that effect is on file.

2. Subject Matter: By this petition the Trustees seek authority to establish a contingent tax liability reserve fund in the amount of \$7,100,000 to provide for the payment of any Federal income and excess profits tax liability which may be found due for the taxable year 1943.

3. Explanatory Statement: If the operations of the railroad of the Debtor should be subject to Federal income and excess profits taxes without regard to the income or loss of the affiliated corporations, the tax liability for 1943 would be approximately \$7,000,000. For several years, however, consolidated Federal income and excess profits tax returns have been filed covering the operations of the railroad of the Debtor and the operations of

Defendants' Exhibit No. 34—(Continued)

all of the affiliated corporations, including The Western Pacific Railroad Corporation, the owner of all of the capital stock of the Debtor Company. During the taxable year 1943 certain of the affiliated corporations had very substantial net losses which more than offset the net income of the Debtor company. The largest net loss was that of the Western Pacific Railroad Corporation and its net loss was primarily attributable to the fact that upon confirmation of the plan of reorganization of the Debtor company the Debtor's corporate stock owned by the holding company became valueless. The Trustees have been advised by their accountants and tax counsel that there is no Federal income or excess profits tax due for the year 1943. However, the accountants and tax advisers have also stated that in view of the substantial amount involved the Commissioner of Internal Revenue may dispute their conclusions, with the result that there may be litigation regarding the matter. The Trustees believe that it is prudent to establish a funded reserve adequate to provide for the payment of the maximum possible tax which may be found to be due.

I desire to call Mr. Elsey to testify regarding this matter.

Testimony

1. What would be the maximum Federal income and excess profits tax liability for the Company if it filed a separate return for the year 1943, accord-

Defendants' Exhibit No. 34—(Continued)

ing to the computations of the Company's accountants and tax advisers?

Approximately \$7,000,000.

2. Please explain to the Court the reason why it is believed no tax will be due under the consolidated return method of reporting the income and losses of the several affiliated corporations.

Consolidated returns have been filed by the debtor company and its affiliated corporations for several years, as permitted by the Federal income and excess profits tax laws. During the calendar year 1943 certain members of the group sustained very substantial losses, particularly The Western Pacific Railroad Corporation. That company sustained a very large loss when the stock of the debtor company owned by it became valueless upon confirmation of the Western Pacific reorganization plan in 1943. The aggregate net losses of the affiliated corporations for the year 1943 more than offset the net income of the debtor company for the same year. According to our advisers no tax is due for 1943 for that reason.

3. Do you believe, however, that it is prudent to establish a funded reserve to provide for the payment of any tax which may ultimately be found due?

Yes, I believe a funded reserve should be established for this purpose. Tax questions are seldom free from doubt. While we are confident

Defendants' Exhibit No. 34—(Continued)

of our conclusion in this instance, nevertheless, in view of the substantial amount here involved, the Internal Revenue Bureau may desire to litigate the matter. I think the debtor company should set aside out of 1943 earnings a sufficient amount so that it will be able to pay the highest possible tax which might conceivably be found due if the Commissioner should prevail in such litigation.

4. What is the attitude of the Trustees about the matter?

They have approved my recommendation that we establish a funded reserve of \$7,100,000 out of 1943 earnings of the railroad of the Debtor.

5. How do you believe that the fund should be held?

I should think that it ought to be invested in United States Treasury securities.

Concluding Statement

The Trustees are asking for an order authorizing the establishment of this reserve fund out of 1943 earnings of the railroad, the fund to be invested in United States Treasury securities. Counsel for the First Mortgage Trustees and counsel for the Reorganization Committee are present in Court and I believe they are prepared to state the position of their respective principals upon this matter.

B. E.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. ~~E~~ 35-A

Western Union
Telegram Form

1944, Jan. 9 AM 10 47

CDU264 CAK=CD NewYork NY 29 12 1P

Charles Elsey
Western Pacific Railroad Co
526 Mission St SFran

Letter twenty-fourth, telegram twenty-eighth, regarding federal tax matter. Very interesting. I approve making appropriate entries on books in December and your proposap create contingency fund and its investment in government securities and you are authorized instruct Matthew file petition with court for formal approval.

T M SCHIMACHER.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 35-B

Heller, Ehrman, White & McAuliffe
Attorneys and Counselors at Law
Nevada Bank Building
San Francisco
Subject: Your file 073

January 26, 1944

Mr. Charles Elsey
The Western Pacific Railroad Company
526 Mission Street
San Francisco, 5

Dear Mr. Elsey:

In reply to your letter of January 24, 1944, num-

bered as above, my approval is extended to the creation of a contingent fund and its investment in securities of the United States to provide for any possible adverse ruling on federal income taxes for the year 1943, such fund to be held until a final determination of the question in issue. If Mr. Schumacher concurs kindly instruct Mr. Matthew to obtain an order of court giving us authority in the matter.

Yours very truly

/s/ SIDNEY M. ERHMAN.

cc Mr. Allan P. Matthew

cc Mr. T. M. Schumacher

[Stamped]: The Western Pacific Railroad Co.
President—Jan. 28, 1944.

[Endorsed]: Filed Feb. 15, 1949.

DEFENDANTS' EXHIBIT No. 37-A

At 40 Wall Street
New York 5, N. Y.

September 27, 1946

Messrs. Whitman, Ransom, Coulson & Goetz
40 Wall Street
New York 5, N. Y.

Gentlemen:

In order to protect any equitable interests that The Western Pacific Railroad Corporation may have in the reserves set up by The Western Pacific

Railroad Company on account of tax deductions, as well as in any refunds of tax payments arising from claims filed by the Corporation, we propose to file a Bill of Complaint in the District Court of the United States, for the Northern District of California, Southern Division, asking that these reserves and refunds, if any, be impounded pending an accounting and an equitable determination to ascertain what, if any, interests the Corporation may have therein.

Appreciating that your firm has acted as tax counsel for both the Company and the Corporation in the filing of Consolidated Tax Returns and in the proceedings now pending before the Internal Revenue Department, we would, of course, not wish to take any steps which would in any way prejudice the claims made in these returns. We would therefore appreciate your advice on this, and would be glad to have any suggestions you may make for the full protection of the interests of the Corporation therein.

I would be glad to arrange a conference between your Mr. Polk and our counsel to discuss this matter further.

Yours very truly,

.....

President.

[Endorsed]: Filed Feb. 17, 1949.

DEFENDANTS' EXHIBIT No. 37B

The Western Pacific Railroad Corporation
51st Floor 40 Wall Street
New York 5, N. Y.

Mr. F. C. Nicodemus, Jr.
40 Wall Street
New York 5, N. Y.

Mr. A. Perry Osborn
20 Exchange Place
New York 5, N. Y.

Gentlemen:

Herewith, for your information, is copy of reply from Mr. James K. Polk of the firm of Whitman, Ransom, Coulson & Goetz, to my letter of September 27, 1946, copy of which was sent to you, relative filing of claim against The Western Pacific Railroad Company and its subsidiaries for participation in federal tax benefits for the years 1942, 1943 and the first four months of 1944.

Yours very truly,

/s/ M. J. CURRY.

Enclosure

[Endorsed]: Filed Feb. 17, 1949.

DEFENDANTS' EXHIBIT No. 37-C

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York
(Copy)

October 4, 1946

Mr. M. J. Curry, President
The Western Pacific Railroad Corporation
40 Wall Street
New York 5, N. Y.

Dear Sir:

This refers to your letter of September 27, 1946, addressed to this firm. The undersigned has been acting as tax counsel in connection with pending tax questions arising under Federal consolidated returns made by the Western Pacific group for the period ended April 30, 1944, and prior open years. In presenting the issues as to these tax matters to the Treasury Department it will be necessary to develop the facts fully and the Treasury Department is clearly entitled to any relevant information. There would, therefore, seem to be no reason why any development of facts in a separate litigation instituted by your Company in the United States District Court in California would present necessary embarrassment in connection with the tax questions.

Very truly yours,

JAMES K. POLK.

[Endorsed]: Filed Feb. 17, 1949.

DEFENDANTS' EXHIBIT No. 41

The Western Pacific Railroad Company

Federal income and excess profits taxes for years 1942 and 1943 and the first four months of 1944 on the basis of assuming that The Western Pacific Railroad Company had filed separate returns and had the benefit of its own net operating loss carry-overs and excess profits credit carry-overs (computed as though it had filed separate returns in prior years) and the additional deductions from income as shown in the note below

Period	Income tax	Excess profits tax	Total
1942	\$3,331,638.25		\$3,331,638.25
1943	3,136,913.38		3,136,913.38
First four months of 1944.....	558,078.49	\$702,478.26	1,260,556.75
	<u>\$7,026,630.12</u>	<u>\$702,478.26</u>	<u>\$7,729,108.38</u>
Income tax for 1942 allocated on consolidated return			4,144,828.87
Difference.....			<u><u>\$3,584,279.51</u></u>

Notes:

(1) The computations of the taxes tabulated above are based on the returns filed. However, the computations give effect to correction of certain errors (immaterial in the returns as filed) and to Revenue Agent's conclusions contained in reports dated June 12, 1947, covering examination of the years 1940 and 1941. The computations also give effect to the following deductions for the years indicated, which were not claimed in the returns filed:—

	1941	1942	1943	First four months of 1944
Accelerated amortization				
United States Government freight cutbacks and refunds	\$50,000.00	\$127,531.24	\$ 259,654.81	\$522,741.10
Partial bad debt loss on Sacramento Northern Railway notes and advances		780,000.00	1,060,000.00	40,000.00
			8,526,690.72	

(2) No excess profits taxes were allocated on consolidated returns.

No (declared value) excess-profits taxes were paid during the period.

February 16, 1949

[Endorsed]: Feb. 17, 1949.

DEFENDANTS' EXHIBIT No. 43

The Western Pacific Railroad Company

Federal income and excess profits taxes for years 1942 and 1943 and the first four months of 1944 on the basis of assuming that The Western Pacific Railroad Company had filed separate returns and had the benefit of its own net operating loss carry-overs and excess profits credit carry-overs (computed as though it had filed separate returns in prior years) and the additional deductions from income as shown in the note below

Period	Income tax	Excess profits tax	Total
1942	\$3,179,638.25		\$3,179,638.25
1943	2,932,913.38		2,932,913.38
First four months of 1944.....	558,078.49	\$693,928.26	1,252,006.75
	<u>\$6,670,630.12</u>	<u>\$693,928.26</u>	<u>\$7,364,558.38</u>
Income tax for 1942 allocated on consolidated return			4,144,828.87
Difference.....			<u><u>\$3,219,729.51</u></u>

Notes:

(1) The computations of the taxes tabulated above are based on the returns filed. However, the computations give effect to correction of certain errors (immaterial in the returns as filed) and to Revenue Agent's conclusions contained in reports dated June 12, 1947, covering examination of the years 1940 and 1941. The computations also give effect to the following deductions for the years indicated, which were not claimed in the returns filed:—

	1941	1942	1943	First four months of 1944
Accelerated amortization				
United States Government freight cutbacks and refunds	\$80,000.00	\$ 127,531.24	\$ 259,654.81	\$522,741.10
Partial bad debt loss on Sacramento Northern Railway notes and advances		1,160,000.00	1,570,000.00	50,000.00
			8,526,690.72	

(2) No excess profits taxes were allocated on consolidated returns.

No (declared value) excess-profits taxes were paid during the period.

February 16, 1949

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 44

The Western Pacific Railroad Company

Federal income taxes for years 1942 and 1943 and the first four months of 1944 on the basis of assuming that The Western Pacific Railroad Company had filed separate returns and had the benefit of its own net operating loss carry-overs and excess profits credit carry-overs (computed as though it had filed separate returns in prior years) and the additional deductions from income as shown in the note below

Period	Tax
1942	\$2,895,638.25
1943	2,120,913.38
First four months of 1944	522,723.30
	<hr/>
	\$5,539,274.93
Income tax for 1942 allocated on consolidated return	4,144,828.87
Difference.....	<hr/>
	\$1,394,446.06
	<hr/>

Notes:

(1) The computations of the taxes tabulated above are based on the returns filed. However, the computations give effect to correction of certain errors (immaterial in the returns as filed) and to Revenue Agent's conclusions contained in reports dated June 12, 1947, covering examination of the years 1940 and 1941. The computations also give effect to the following deductions for the years indicated, which were not claimed in the returns filed:—

	1941	1942	1943	First four months of 1944
Accelerated amortization				
United States Government freight cutbacks and refunds	\$50,000.00	\$ 127,531.24	\$ 259,654.81	\$522,741.10
Partial bad debt loss on Sacramento Northern Railway notes and advances		780,000.00	1,060,000.00	40,000.00
United States Government reparations claims			8,526,690.72	
(2) No excess profits taxes would have been payable on separate returns and no excess profits taxes were allocated on consolidated returns.		1,090,000.00	2,540,000.00	910,000.00

No (declared value) excess-profits taxes were paid during the period.

February 16, 1949

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 45

The Western Pacific Railroad Company

Federal income taxes for years 1942 and 1943 and the first four months of 1944 on the basis of assuming that The Western Pacific Railroad Company had filed separate returns and had the benefit of its own net operating loss carry-overs and excess profits credit carry-overs (computed as though it had filed separate returns in prior years) and the additional deductions from income as shown in the note below

Period	Tax
1942	\$2,743,638.25
1943	1,916,913.38
First four months of 1944	518,723.30
	<hr/>
Income tax for 1942 allocated on consolidated return	\$5,179,274.93
	4,144,828.87
	<hr/>
Difference.....	\$1,034,446.06
	<hr/> <hr/>

Notes:

(1) The computations of the taxes tabulated above are based on the returns filed. However, the computations give effect to correction of certain errors (immaterial in the returns as filed) and to Revenue Agent's conclusions contained in reports dated June 12, 1947, covering examination of the years 1940 and 1941. The computations also give effect to the following deductions for the years indicated, which were not claimed in the returns filed:—

	1941	1942	1943	First four months of 1944
Accelerated amortization				
United States Government freight cutbacks and refunds	\$80,000.00	\$ 127,531.24	\$ 259,654.81	\$522,741.10
Partial bad debt loss on Sacramento Northern Railway notes and advances		1,160,000.00	1,570,000.00	50,000.00
United States Government reparations claims			8,526,690.72	
(2) No excess profits taxes would have been payable on separate returns and no excess profits taxes were allocated on consolidated returns.		1,090,000.00	2,540,000.00	910,000.00

No (declared value) excess-profits taxes were paid during the period.

February 16, 1949

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 46

The Western Pacific Railroad Corporation

Federal income taxes for the years 1922 to 1944, inclusive, on the basis of assuming that The Western Pacific Railroad Corporation had filed separate tax returns and comparison thereof with taxes allocated to that

Company on the basis of consolidated returns filed

Year	Tax on separate return (1)	Tax allocated on consolidated return (2)	Excess of tax on separate return over tax allocated on consolidated return
1922.....	Nil	Nil	Nil
1923.....	Nil	Nil	Nil
1924.....	\$ 57,030.24	Nil	\$ 57,030.24
1925.....	41,297.55	Nil	41,297.55
1926.....	21,094.40	\$10,429.61	10,664.79
1927.....	10,551.55	10,330.90	220.65
1928.....	22,023.22	Nil	22,023.22
1929.....	56,386.32	39,158.90	17,227.42
1930.....	56,692.98	Nil	56,692.98
1931.....	76,232.09	Nil	76,232.09
1932.....	100,209.54	Nil	100,209.54
1933.....	83,544.25	Nil	83,544.25
1934.....	82,334.04	Nil	82,334.04
1935.....	46,499.56	Nil	46,499.56
1936.....	Nil	Nil	Nil
1937.....	Nil	Nil	Nil
1938.....	Nil	Nil	Nil
1939.....	Nil	Nil	Nil
1940.....	Nil	Nil	Nil
1941.....	Nil	Nil	Nil
1942.....	Nil	Nil	Nil
1943.....	Nil	Nil	Nil
1944.....	Nil	Nil	Nil
	<u>\$653,895.74</u>	<u>\$59,919.41</u>	<u>\$593,976.33</u>

Notes:

(1) 1922 was the first year as to which corporations had an election to file separate or consolidated returns.

(2) The amounts shown in this column are the same as those shown in Schedule 1 of Price, Waterhouse & Co. report dated January 5, 1949.

(3) No excess profits taxes would have been payable on separate returns and no excess profits taxes were allocated on consolidated returns.

No (declared value) excess-profits taxes were paid during the period.

January 14, 1949.

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 47

The Western Pacific Railroad Corporation

Federal income taxes for the years 1922 to 1944, inclusive, on the basis of assuming that The Western Pacific Railroad Company had filed separate tax returns and comparison thereof with taxes allocated to that Company on the basis of consolidated returns filed

Year	Tax on separate return (1)	Tax allocated on consolidated return (2)	Excess of tax on separate return over tax allocated on consolidated return
1922.....	\$ 100,962.08	\$ 82,663.92	\$ 18,298.16
1923.....	215,568.99	Nil	215,568.99
1924.....	151,455.91	Nil	151,455.91
1925.....	310,286.32	310,477.26	(190.94)
1926.....	365,076.26	358,720.53	6,355.73
1927.....	94,051.47	98,569.77	(4,518.30)
1928.....	78,156.58	99,322.29	(21,165.71)
1929.....	57,219.42	14,153.75	43,065.67
1930.....	Nil	Nil	Nil
1931.....	Nil	Nil	Nil
1932.....	Nil	Nil	Nil
1933.....	Nil	Nil	Nil
1934.....	Nil	Nil	Nil
1935.....	Nil	Nil	Nil
1936.....	Nil	Nil	Nil
1937.....	Nil	Nil	Nil
1938.....	Nil	Nil	Nil
1939.....	Nil	Nil	Nil
1940.....	Nil	Nil	Nil
1941.....	Nil	Nil	Nil
Totals	<u>\$1,372,777.03</u>	<u>\$963,907.52</u>	<u>\$408,869.51</u>

Notes:

- (1) 1922 was the first year as to which corporations had an election to file separate or consolidated returns.
- (2) The amounts shown in this column are the same as those shown in Schedule 1 of Price, Waterhouse & Co. report dated January 5, 1949.
- (3) No excess profits taxes would have been payable on separate returns and no excess profits taxes were allocated on consolidated returns.

No (declared value) excess-profits taxes were paid during the period.

February 15, 1949.

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 49B

(Identification Only)

Witness.....

Exhibit.....

In the District Court of The United States for the Northern District
of California Southern Division

The Western Pacific Railroad Corporation vs. The Western Pacific
Railroad Company et al, No. 26508-G

Record of Weekly Sales of Preferred and Common Shares of The Western Pacific Railroad Company on New York Stock Exchange Jan. 1, 1945, to Oct. 31, 1946, as published in "The Commercial and Financial Chronicle" of New York. (Weeks begin Saturday and end Friday.)

Week Ending	Preferred			Common		
	High	Low	Volume	High	Low	Volume
	(Dollars)		(Shares)	(Dollars)		(Shares)
1945						
January 5.....	73	64 $\frac{1}{4}$	9100	38	30 $\frac{1}{2}$	11200
January 12.....	73 $\frac{1}{4}$	71	3700	37 $\frac{3}{4}$	34 $\frac{3}{8}$	5500
January 19.....	70 $\frac{3}{4}$	65	3800	35	32	10300
January 26.....	68 $\frac{1}{4}$	64 $\frac{1}{2}$	3500	36 $\frac{1}{4}$	31 $\frac{1}{2}$	5400
February 2.....	68 $\frac{1}{4}$	65 $\frac{1}{2}$	2200	35 $\frac{7}{8}$	33	3900
February 9.....	69	66 $\frac{1}{4}$	1800	35 $\frac{3}{4}$	33 $\frac{1}{2}$	3800
February 16.....	70 $\frac{1}{2}$	67 $\frac{1}{8}$	1400	36 $\frac{1}{4}$	34	3200
February 23.....	71	69 $\frac{1}{4}$	1700	36 $\frac{1}{2}$	35	3000
March 2.....	76 $\frac{1}{2}$	70 $\frac{1}{2}$	3100	37 $\frac{1}{4}$	34 $\frac{1}{2}$	4800
March 9.....	77 $\frac{1}{2}$	73	2200	37 $\frac{3}{8}$	33 $\frac{3}{8}$	3100
March 16.....	76 $\frac{1}{2}$	74	600	36 $\frac{1}{2}$	34 $\frac{1}{2}$	1900
March 23.....	78	75 $\frac{1}{4}$	1900	41 $\frac{1}{4}$	36 $\frac{5}{8}$	10300
March 30.....	76 $\frac{5}{8}$	74 $\frac{1}{2}$	1700	39 $\frac{7}{8}$	36 $\frac{1}{4}$	5600
April 6.....	76	73 $\frac{1}{2}$	600	39	38	2200
April 13.....	77	75	900	39 $\frac{3}{4}$	38 $\frac{1}{4}$	3100
April 20.....	79 $\frac{7}{8}$	77	1600	41 $\frac{7}{8}$	39 $\frac{1}{4}$	8100
April 27.....	85	79 $\frac{1}{2}$	2700	45 $\frac{1}{2}$	41 $\frac{1}{4}$	10800
May 4.....	86	83	1500	45 $\frac{3}{4}$	42	3800
May 11.....	84	81	1200	44 $\frac{1}{2}$	41	3100
May 18.....	85	82	900	43 $\frac{5}{8}$	41 $\frac{5}{8}$	1500
May 25.....	82 $\frac{7}{8}$	82	200	43	41 $\frac{1}{2}$	3200
June 1.....	85 $\frac{1}{2}$	82 $\frac{7}{8}$	300	44 $\frac{3}{4}$	43	5900
June 8.....	86	84 $\frac{1}{2}$	900	46 $\frac{5}{8}$	43 $\frac{3}{8}$	5100
June 15.....	88	86 $\frac{1}{4}$	1200	46 $\frac{3}{4}$	45	6900
June 22.....	91	87	2000	51	46 $\frac{3}{4}$	8200
June 29.....	92	90	2500	53 $\frac{3}{8}$	48 $\frac{5}{8}$	13200
July 6.....	89	86 $\frac{1}{4}$	3100	52 $\frac{3}{4}$	47 $\frac{1}{2}$	10200
July 13.....	90	86 $\frac{3}{4}$	9200	57 $\frac{1}{8}$	52 $\frac{3}{4}$	13100

Week Ending		Preferred			Common		
		High (Dollars)	Low	Volume (Shares)	High (Dollars)	Low	Volume (Shares)
1945							
July	20.....	90	85	2600	53	47 $\frac{1}{2}$	2900
July	27.....	85 $\frac{3}{4}$	81	4100	49 $\frac{3}{8}$	45 $\frac{1}{4}$	5700
August	3.....	89	84 $\frac{3}{4}$	3300	49	45 $\frac{1}{2}$	1100
August	10.....	89	86 $\frac{3}{8}$	4600	49 $\frac{1}{2}$	45 $\frac{3}{8}$	3800
August	17.....	88	85	1000	46	44	1800
August	24.....	85	81	2400	44	39	6300
August	31.....	86	85	700	48	43 $\frac{1}{2}$	3200
September	7.....	86 $\frac{7}{8}$	85 $\frac{3}{4}$	900	49	47	1300
September	14.....	87 $\frac{1}{4}$	85 $\frac{7}{8}$	1500	47 $\frac{3}{4}$	46 $\frac{1}{2}$	1200
September	21.....	86 $\frac{1}{4}$	84 $\frac{3}{8}$	900	48 $\frac{3}{4}$	44 $\frac{1}{4}$	2700
September	28.....	87	85	1000	48 $\frac{3}{4}$	47 $\frac{1}{2}$	1500
October	5.....	88 $\frac{3}{4}$	87	2900	48 $\frac{1}{4}$	47	1100
October	12.....	88 $\frac{1}{2}$	87 $\frac{3}{4}$	1700	49 $\frac{1}{4}$	46	5200
October	19.....	89 $\frac{3}{4}$	87	6000	51	49	5300
October	26.....	89 $\frac{7}{8}$	88	3400	51	49	3600
November	2.....	90	89	2800	51 $\frac{1}{2}$	48	4900
November	9.....	90 $\frac{3}{8}$	89	2400	53 $\frac{1}{4}$	51 $\frac{1}{4}$	3800
November	16.....	90 $\frac{5}{8}$	89 $\frac{1}{2}$	1600	52 $\frac{1}{4}$	48 $\frac{3}{4}$	3300
November	23.....	90 $\frac{1}{2}$	89	1600	52	49	2500
November	30.....	90	87 $\frac{7}{8}$	1400	55 $\frac{7}{8}$	49	5900
December	7.....	88 $\frac{1}{2}$	86 $\frac{1}{4}$	900	55 $\frac{7}{8}$	53 $\frac{5}{8}$	2600
December	14.....	90	86 $\frac{1}{2}$	2100	53 $\frac{1}{2}$	51 $\frac{1}{2}$	1800
December	21.....	89 $\frac{1}{2}$	87	1300	52 $\frac{1}{2}$	49	1700
December	28.....	89	88	600	51	48	1600
1946							
January	4.....	91	87 $\frac{3}{4}$	1200	49 $\frac{1}{2}$	47	2300
January	11.....	91 $\frac{7}{8}$	90 $\frac{1}{2}$	1200	51 $\frac{1}{2}$	48 $\frac{5}{8}$	4300
January	18.....	92	90 $\frac{7}{8}$	1900	53 $\frac{5}{8}$	49 $\frac{3}{4}$	4400
January	25.....	91 $\frac{1}{2}$	90 $\frac{1}{4}$	1100	53 $\frac{3}{8}$	50 $\frac{1}{4}$	3300
February	1.....	94 $\frac{3}{4}$	90 $\frac{3}{4}$	3600	55 $\frac{3}{4}$	53 $\frac{1}{2}$	3600
February	8.....	96	94 $\frac{1}{2}$	2100	56	52	5400
February	15.....	96 $\frac{1}{2}$	96 $\frac{1}{4}$	1100	53 $\frac{1}{2}$	51	1800
February	22.....	96 $\frac{1}{2}$	93	1500	54 $\frac{1}{2}$	48 $\frac{3}{8}$	2900
March	1.....	95	92 $\frac{1}{8}$	900	49 $\frac{3}{4}$	48	2600
March	8.....	95	93 $\frac{3}{8}$	1100	50	46 $\frac{1}{2}$	1700
March	15.....	94	93 $\frac{1}{2}$	1000	50	48	1900
March	22.....	96 $\frac{1}{2}$	95	1000	48 $\frac{1}{2}$	47 $\frac{1}{2}$	700
March	29.....	97	93 $\frac{7}{8}$	900	54	48	3800
April	5.....	99	96 $\frac{1}{2}$	2800	55 $\frac{1}{4}$	51 $\frac{3}{4}$	2800
April	12.....	100	98 $\frac{1}{2}$	1400	53 $\frac{3}{4}$	51	2900
April	19.....	100 $\frac{1}{2}$	99 $\frac{7}{8}$	1400	53 $\frac{1}{4}$	51	900
April	26.....	101	100 $\frac{1}{8}$	700	53	51 $\frac{1}{2}$	3200
May	3.....	100 $\frac{1}{2}$	99	1200	54	52 $\frac{1}{2}$	1000
May	10.....	99 $\frac{1}{2}$	98 $\frac{1}{4}$	500	53 $\frac{1}{2}$	50 $\frac{3}{4}$	1400

		Preferred			Common		
Week Ending		High (Dollars)	Low	Volume (Shares)	High (Dollars)	Low	Volume (Shares)
1946							
May	17.....	99	98	800	517 $\frac{7}{8}$	503 $\frac{3}{4}$	1200
May	24.....	987 $\frac{7}{8}$	98	300	553 $\frac{3}{4}$	51	5700
May	31.....	981 $\frac{1}{4}$	973 $\frac{3}{4}$	200	553 $\frac{3}{4}$	54	2500
June	7.....	983 $\frac{3}{4}$	973 $\frac{3}{4}$	1100	543 $\frac{3}{4}$	53	1700
June	14.....	991 $\frac{1}{2}$	98	700	561 $\frac{1}{2}$	53	4600
June	21.....	991 $\frac{1}{2}$	99	600	561 $\frac{1}{2}$	54	4100
June	28.....	971 $\frac{1}{2}$	95	700	54	503 $\frac{3}{4}$	700
July	5.....	981 $\frac{1}{2}$	961 $\frac{1}{2}$	500	52	513 $\frac{3}{4}$	200
July	12.....	971 $\frac{1}{2}$	951 $\frac{1}{2}$	1000	52	50	1800
July	19.....	971 $\frac{1}{2}$	96	1000	51	493 $\frac{3}{4}$	700
July	26.....	981 $\frac{1}{2}$	941 $\frac{1}{2}$	900	501 $\frac{1}{4}$	48	700
August	2.....	98	94	1200	481 $\frac{1}{4}$	47	1600
August	9.....	98	96	300	471 $\frac{1}{2}$	471 $\frac{1}{2}$	200
August	16.....	975 $\frac{7}{8}$	961 $\frac{1}{2}$	500	48	473 $\frac{3}{4}$	200
August	23.....	98	971 $\frac{1}{2}$	300	48	46	200
August	30.....	94	903 $\frac{3}{4}$	700	441 $\frac{1}{4}$	411 $\frac{1}{4}$	1200
September	6.....	90	87	300	42	321 $\frac{7}{8}$	3400
September	13.....	811 $\frac{1}{4}$	76	800	361 $\frac{1}{2}$	33	6200
September	20.....	81	80	900	351 $\frac{1}{2}$	293 $\frac{3}{4}$	9400
September	27.....	761 $\frac{1}{2}$	75	400	341 $\frac{1}{4}$	27	6800
October	4.....	76	751 $\frac{1}{4}$	400	34	321 $\frac{1}{2}$	2800
October	11.....	773 $\frac{3}{4}$	71	1300	33	291 $\frac{1}{4}$	4200
October	18.....	78	761 $\frac{7}{8}$	300	37	311 $\frac{1}{2}$	4500
October	25.....	79	761 $\frac{1}{4}$	600	353 $\frac{3}{8}$	34	1900
November	1.....	79	771 $\frac{7}{8}$	500	36	301 $\frac{1}{2}$	2900

DEFENDANTS' EXHIBIT No. 50

69278

Treasury Department

Washington 25

(Copy)

Office of Commissioner of Internal Revenue

Address Reply To

Commissioner of Internal Revenue

And Refer To IT:P:CA WTS

Dec. 9, 1947

Atchison, Topeka & Santa Fe Railway Company

Chicago, Illinois

Attention: Mr. W. E. Davis

General Auditor

Gentlemen:

Reference is made to your letter dated March 20, 1947, in which you submit a statement of facts with respect to charges for transportation of war-time commodities for the Government.

The facts submitted indicate that beginning in 1941 and continuing throughout the war years you transported military and naval forces and property for the Government for the prosecution of the war. Transportation charges were collected from the various Government departments and reported as taxable income. At the time of rendering the bills for the transportation charges, you state that it was known to you, as well as the Government departments, that the bills were excessive because such

Defendants' Exhibit No. 50—(Continued)

bills did not reflect the lower rates in accordance with the land grants and also due to the fact that many shipments of property were of a secret nature and the contents thereof were not known to you. Furthermore, many shipments contained new commodities on which rates had not been established. It was the custom for the Government departments to pay the bills for transportation charges as presented with the understanding that adjustments would be made in accordance with section 322 of the Transportation Act of 1940 when such bills were audited by the General Accounting Office.

In accordance with section 321(a) of the Transportation Act of 1940, the Government was entitled to special rates for the transportation of military and naval forces and also military and naval property. Transportation of the military and naval forces and property is eligible for net land grant rates as provided in the several Granting Acts and Equalization Agreements. Section 322 of the same Act provides that payment for transportation of mail, persons or property for or on behalf of the United States shall be made upon presentation of the bills therefor prior to audit or settlement by the General Accounting Office. The right is reserved, however, for the General Accounting Office to deduct the amount of any overpayment for such transportation from any amount subsequently due to the carrier.

According to the schedule submitted with your

Defendants' Exhibit No. 50—(Continued)

letter, it appears that the General Accounting Office began auditing the bills for the transportation charges as early as 1942, in which year demand was made for the first refunds of the excessive transportation charges. These refunds are effective for each of the years 1942 to 1946, inclusive, and additional refunds will probably be demanded for subsequent years. During these years the amounts of the refunds were taken as deductions in your Federal tax returns. The statement submitted by you shows that excessive transportation charges were received during the years 1941 to 1945, inclusive, in the amount of \$22,170,000 and that this amount was refunded during the years 1942 to 1946, inclusive.

You state that by reason of the delay in the audit of the transportation bills by the General Accounting Office the charges collected have been subjected to high excess profits tax rates whereas the repayments have extended into the post-war years when the tax rates are much lower. Due to the repayments made, the Government has paid out and you have collected only the correct transportation charges but due to the high excess profits tax rates during the war years you feel that you have suffered a penalty because of circumstances which were entirely beyond your control. It is your view that taxable income for the several years involved should be adjusted and thus neutralize the effect of the receipt and repayment of the excessive charges.

Section 43 of the Internal Revenue Code provides that:

Defendants' Exhibit No. 50—(Continued)

“The deductions and credits (other than the corporation dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which ‘paid or accrued’ or ‘paid or incurred’, dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. * * *”

The facts presented by you show conclusively that by reporting the transportation charges as income on the accrual basis and deducting the repayments in the year in which repaid, the taxable income for the years involved is not clearly reflected and thus a large net tax is incurred due to the high tax rates during the war years.

In view of the facts and circumstances presented by you, under the authority conferred in section 43 permission is granted to allocate the repayments of the excessive transportation charges to the years in which the charges were reported as taxable income. Such adjustments may not be made in a prior year or years where the statutory period of limitation for assessing deficiencies or filing claims for refund as provided in section 322 of the Code has expired or a final closing agreement has been executed.

In this connection it is understood that you agree as follows:

1. All amounts received by you as transportation charges from the Federal Government departments

Defendants' Exhibit No. 50—(Continued)
and agencies shall be included in taxable income on the accrual basis.

2. All refunds of transportation charges made by you to the Federal Government shall be allowed as deductions in the year or years in which such transportation charges were reported as income and any deductions claimed by you in the year or years such refunds were made will be disallowed.

3. For the years 1941 to 1946, inclusive, the amount of interest on refunds of income and excess profits taxes shall be allowed only to the extent of, and limited to, the amount of interest on deficiencies resulting from these adjustments.

The adjustments agreed to above will not include any items which are the subject of presently pending claims filed on behalf of the United States by the Attorney General before the Interstate Commerce Commission for refunds from the railroads, including the Atchison, Topeka & Santa Fe Railway Company, for excessive charges for the transportation of war-time freight.

Notification from you of your agreement with this letter will constitute authority for disposition of the issues for the years involved.

Please reply within fifteen days, for the attention of IT:P:CA-WTS.

Very truly yours,

/s/ GEO. J. SCHOENEMAN,
Commissioner.

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 51
(Identification only)

Redistribution of the debits to freight revenue made during the period May 1944 to July 1948, inclusive, resulting from government cutbacks and refunds on government shipments terminated on the Western Pacific, segregated to year in which traffic moved

Year Shipment Moved		Amount
1939	.....	\$ 62.33
1940	.....	1,535.67
1941	.....	53,600.86
1942	.....	784,927.86
1943	.....	1,062,694.64
Jan. to Apr. 1944	.....	35,716.03
May to Dec. 1944	.....	48,473.42
1945	.....	44,401.65
1946	.....	4,236.04
1947	.....	454.11
1948	.....	84.23
Total		<hr/> \$2,036,186.84

DEFENDANTS' EXHIBIT No. 53

(Identification only)

The Western Pacific Railroad Company

43 Exchange Place,

New York, November 28, 1923.

Mr. C. M. Levey, President,
The Western Pacific Railroad Company,
Mills Bldg., San Francisco, California.

Dear Mr. Levey:

I am enclosing herewith two statements showing the taxable income, as reported to the Commissioner of Internal Revenue by The Western Pacific Railroad Corporation on consolidated returns for the years 1921 and 1922, and proposed allocation of the taxes to the various companies, the income of which is included in the returns.

The total tax for 1921 (\$31,813.09) was originally paid by The Western Pacific Railroad Company and of the tax for 1922 (\$114,929.64) three-quarters has been paid by The Western Pacific Railroad Corporation, which company will pay the remaining one-quarter which will be due December 15, 1923. The method of allocation, viz., prorating the entire amount among the companies showing taxable income, is, so far as we are able to determine, the practice followed by other companies making consolidated returns.

If this plan meets with your approval, The Western Pacific Railroad Company can pay to The West-

ern Pacific Railroad Corporation from New York funds:

Tax for 1922\$77,037.34

Less tax paid by W.P.R.R.Co. in
excess of proporation for 1921 9,836.61

Net amount to pay \$67,200.73

In addition, The Western Pacific R.R. Corpora-
tion should receive from :

Western Realty Co.—1922 Tax 390.76

Standard R.&D. Co.—1922 Tax 206.87

The amounts due from other subsidiary companies will be carried by The Western Pacific Railroad Corporation pending settlement with the various companies or adjustments as may be deemed advisable upon determination of proposed reorganization of Denver System and the clearing up of pending Sacramento Northern situation.

This proposed adjustment is on the basis of tax returns as originally filed, copies of which are on file in Mr. DeGraff's office, and is subject to revision as may finally be determined by adjustments in the amount of taxable income due to examination of the accounts by the Treasury Department.

Yours truly,

/s/ S. R. BALDWIN.

DEFENDANTS' EXHIBIT No. 54

Mr. F. C. Nicodemus, Jr.,
40 Wall Street,
New York, N. Y.

Dear Mr. Nicodemus:

As you know the by-laws of this Corporation provide that the annual meeting of stockholders be held in Wilmington, Delaware, on the first Tuesday in October of each year, which this year falls on October 1st.

The annual meeting last year, you will recall, was convened on the scheduled date and adjourned sine die. Upon advice of counsel and concurrence of our Board, notices of the meeting were sent to stockholders unaccompanied by proxy or proxy statement, the latter a requirement of the S. E. C.

I should like to have your opinion as to how this year's meeting should be handled, that is, will we pursue the same course as we did last year, sending out notices only, or should we proceed in the regular way? If we do the latter, it will entail considerable labor and expense and it will be necessary at next Wednesday's meeting of the Board to name a Proxy Committee, approve form of proxy and a proxy statement.

Defendants' Exhibit No. 54—(Continued)

Won't you please give me the benefit of your advice in this at your early convenience, and oblige.

Yours very truly,

/s/ M. J. CURRY.

[Marginal Notes]: \$5,000? Amt. paid to P. & Greer plus accrual of legal services to Sloss. Election of directors 10 to 2 to fill vacancies. Amt. expended for printing and mailing.

Pierce & Greer
40 Wall Street
New York

August 28, 1940.

Mr. M. J. Curry,
Secretary and Treasurer,
The Western Pacific Railroad Corporation,
37 Wall Street,
New York City.

Dear Mr. Curry:

This refers to your letter of August 23, 1940, with reference to the annual meeting of stockholders of the Corporation scheduled to be held Tuesday, October 1st, next, at Wilmington, Delaware.

It is our judgment that you should this year pursue the same course you pursued last year. That is, issue the notice in the usual form but do not name a proxy committee or request proxies. If a quorum fails to appear, you may again pursue the same course as last year, that is, after meeting on the

Defendants' Exhibit No. 54—(Continued)
scheduled date adjourn sine die for lack of quorum.

Very truly yours,

/s/ F. C. NICODEMUS, JR.

[Stamped]: Received Aug. 28, 1940 Western Pacific Railroad Corporation.

August 2, 1941.

Mr. F. C. Nicodemus, Jr.,
40 Wall Street,
New York, N. Y.

Dear Mr. Nicodemus:

As you know, the By-laws of this Corporation provide that the annual meeting of stockholders be held in Wilmington, Delaware, on the first Tuesday in October of each year, this year being October 7th.

I should like to have your opinion as to how this meeting should be handled; that is, should we pursue the same course as we have in the past two years and send out Notice of Meeting only to the stockholders, or, should we send out notice of Meeting accompanied by Proxy and Proxy Statement. The latter method of handling would, of course, entail considerable labor and expense and it will be necessary to have a Board Meeting to name a Proxy Committee, approve form of Proxy and Proxy Statement.

Defendants' Exhibit No. 54—(Continued)

Will you please let me have the benefit of your advice in this matter, and oblige.

Yours very truly,

/s/ M. J. CURRY.

Pierce & Greer
40 Wall Street
New York

August 18, 1941.

Mr. M. J. Curry
Secretary and Treasurer
The Western Pacific Railroad Corporation
37 Wall Street
New York City

Dear Mr. Curry:

Mr. Nicodemus has asked me to reply to your letter of August 2, 1941, with reference to the annual meeting of stockholders of The Western Pacific Railroad Corporation to be held in Wilmington, Delaware, on October 7, 1941.

We are both of the opinion that this annual meeting should be handled in the same way as the annual meetings of the past two years, that is, a notice of meeting, omitting form of Proxy and Proxy Statement, should be mailed to the stockholders.

If a quorum should fail to appear it would be

Defendants' Exhibit No. 54—(Continued)
in order, as in past years, to adjourn the meeting
sine die for lack of a quorum.

Yours very truly,

/s/ H. BRUA CAMPBELL.

[Initialed]: JFW.

[Stamped]: Received Aug. 19, 1941 Western Pa-
cific Railroad Corporation.

[Stamped]: M. J. C. Aug. 19, 1941.

August 3, 1942.

Messrs. Pierce & Greer
40 Wall Street
New York, N. Y.

Gentlemen:

As you know, the By-Laws of this Corporation
provide that the Annual Meeting of Stockholders
be held in Wilmington, Delaware, on the first Tues-
day in October of each year—this year the date
being October 6th. [In Pencil]: 5th 1943.

In this connection, I should like to know whether,
in your opinion, it would be proper to pursue the
same course as we have during the past three years;
that is, mail to the stockholders a notice of meeting,
omitting form of Proxy and Proxy Statement, and,
if a quorum should fail to appear, to adjourn the
meeting sine die for lack of quorum.

Yours very truly,

/s/ M. J. CURRY.

Defendants' Exhibit No. 54—(Continued)

Pierce & Greer
40 Wall Street
New York

August 8, 1942.

Mr. M. J. Curry
President
The Western Pacific Railroad Corporation
37 Wall Street
New York City

Dear Mr. Curry:

We have your letter of August 3, 1942, with reference to the annual meeting of stockholders of the Corporation to be held this year pursuant to the provisions of the By-Laws on October 6th, being the first Tuesday in October.

In our opinion it will be proper to pursue the same course as has been taken during the past three years, namely, seasonably to mail to the stockholders a notice of meeting, omitting form of Proxy and Proxy Statement, and if a quorum should fail to appear to adjourn the meeting sine die for want of a quorum.

Yours very truly,

PIERCE & GREER.

[Initialed]: JFW.

[Stamped]: Received Aug. 8, 1942 The Western Pacific Railroad Corporation.

[Stamped]: M.J.C. Aug. 8, 1942.

Defendants' Exhibit No. 54—(Continued)

5

August 5, 1943.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Gentlemen:

As you know, the By-Laws of this Corporation provide that the Annual Meeting of Stockholders be held in Wilmington, Delaware on the first Tuesday in October of each year—this year the date being October 5th.

In view of the conditions surrounding the corporation, will you please advise what action we should take in the matter.

Yours very truly,

/s/ M. J. CURRY.

Defendants' Exhibit No. 54—(Continued)

Pierce & Greer
40 Wall Street
New York

September 10, 1943.

Mr. M. J. Curry
President
The Western Pacific Railroad Corporation
37 Wall Street
New York, 5, N. Y.

Dear Mr. Curry:

Referring to your letter to our firm dated August 5, 1943, with respect to the Annual Meeting of Stockholders of The Western Pacific Railroad Corporation, Mr. Nicodemus and I believe that in compliance with the provisions of the By-Laws of the Corporation the Secretary should seasonably mail the required notice of such meeting to the stockholders of the Company and that all that need be said in such notice is that the Annual Meeting of Stockholders of the Corporation will be held pursuant to the provisions of the By-Laws on Tuesday, October 5, 1943 at 12 o'clock noon at the principal office of the Corporation, No. 100 West 10th Street, Wilmington, Delaware, for the election of Directors of the Corporation.

Yours very truly,

/s/ H. BRUA CAMPBELL.

Defendants' Exhibit No. 54—(Continued)

[Marginal Notes]: JFW. OK to handle accdly
/s/ MJC.

[Stamped]: M.J.C. Sept. 10, 1943.

[Stamped]: Received Sept. 10, 1943 The West-
ern Pacific Railroad Corporation.

August 4, 1944.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

The by-laws of this corporation provide that its annual meeting should be held the first Tuesday in October of each year (being October 3rd this year) at 12 o'clock noon, at its corporate office, the Corporation Trust Company, Wilmington, Delaware.

As you know, in the past four years, due to conditions surrounding the corporation, we merely mailed notices of the meetings to stockholders of record as of a specified date. Meetings were held each year but due to lack of quorum were adjourned sine die.

Subsequent to the annual meeting for 1943, special meetings of the stockholders were held on Decem-

Defendants' Exhibit No. 54—(Continued)
ber 28, 1943, which recessed to various dates thereafter and finally adjourned, and on April 20, 1944, when that certain agreement between the Corporation and its three secured creditors was submitted and approved by a majority vote of the stockholders present in person or represented by proxy.

The provisions of the said agreement, as you know, have since been carried out, which included the transfer of the capital stock of The Western Pacific Railroad Company to the Reorganization Committee, etc.

In view of the aforementioned facts and other pending matters, I should like to receive your opinion as to what we should do in connection with the forthcoming meeting. It occurs to me it would be appropriate, when mailing the notices, to also include a letter over the President's name, advising the stockholders of the status of the Corporation's affairs. Do you agree?

Yours very truly,

/s/ M. J. CURRY.

Note: Saw Mr. Nicodemus today and asked for a reply to this letter and he said he would turn it over to Mr. Campbell for handling.

/s/ JFW.

8/23/44.

Defendants' Exhibit No. 54—(Continued)

Pierce & Greer
40 Wall Street
New York 5, N. Y.

September 6, 1944.

Mr. M. J. Curry
President

The Western Pacific Railroad Corporation
37 Wall Street
New York 5

Dear Mr. Curry:

Mr. Nicodemus has asked me to reply to your letter of August 4, 1944, with reference to the annual meeting of stockholders of the Corporation, which under its By-Laws is scheduled to be held on Tuesday, October 3, 1944, at 12 o'clock noon, at the principal office of the Corporation, 100 West 10th Street, Wilmington, Delaware, for the election of directors.

Mr. Nicodemus believes that the Corporation should do as it did last year, that is, have the Secretary mail to the stockholders the required notice of meeting in the customary form. He does not favor sending out to the stockholders with the above notice of meeting a letter designed to inform them as to the status of the Corporation's affairs.

Yours very truly,

/s/ H. BRUA CAMPBELL.

Defendants' Exhibit No. 54—(Continued)

[Stamped]: Received Sept. 7, 1944 Western
Pacific Railroad Co.

[Stamped]: M.J.C. Sept. 7, 1944.

MJC:LB

10 Perth Avenue
New Rochelle, N. Y.
August 3, 1945

Corporation Trust Company
100 West 10th Street
Wilmington 99, Delaware

Attention: Mr. Alfred Jervis

Dear Mr. Jervis:

This acknowledges receipt of your letter dated July 31 in regard to the annual meeting of The Western Pacific Railroad Corporation to be held October 2, 1945, at its corporate office in Wilmington, Delaware.

We will give this necessary attention and communicate further with you in the near future.

Yours very truly,

/s/ M. J. CURRY.

Defendants' Exhibit No. 54—(Continued)

Pierce & Greer
40 Wall Street
New York 5, N. Y.

August 10, 1945.

Mr. M. J. Curry
President
The Western Pacific Railroad Corporation
Room 5205, 40 Wall Street
New York 5, N. Y.

Dear Mr. Curry:

Mr. Nicodemus has asked me to reply to your letter of August 3, 1945, enclosing copy of letter dated July 31, 1945, addressed to you by the Corporation Trust Company, 100 West 10th Street, Wilmington, Delaware, with reference to the Annual Meeting of Stockholders of The Western Pacific Railroad Corporation which under its By-Laws should be held on Tuesday, October 2, 1945, at the principal office of the Corporation, 100 West 10th Street, Wilmington, Delaware, for the election of Directors.

It is Mr. Nicodemus' view as well as my own that the Corporation should proceed as it did last year, that is, have the Secretary mail to the stockholders the required notice of meeting in the customary form. It will doubtless be feasible for you to arrange to have the meeting conducted by representatives of the Corporation Trust Company in which

Defendants' Exhibit No. 54—(Continued)
event I assume that you will furnish them the information requested in the second paragraph of their letter to you of July 31, 1945, and will also arrange with said Company, as Transfer Agent, to file at the place where the meeting is to be held at least ten days before the meeting the required certified alphabetical list of stockholders entitled to vote at said meeting.

Yours very truly,

/s/ H. BRUA CAMPBELL.

[Stamped]: Received Aug. 10, 1945.

[Stamped]: M.J.C. Aug. 10, 1945.

51st Floor
40 Wall Street
New York 5, N. Y.
August 5, 1946

Messrs. Pierce and Greer, Counsel
40 Wall Street
New York 5, N. Y.

Attention—Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

Herewith is copy of a letter dated July 31, 1946, from The Corporation Trust Company, Wilmington, Delaware, with reference to the annual meeting of this Corporation which is to be held in that city on Tuesday, October 1, 1946.

Defendants' Exhibit No. 54—(Continued)

I shall appreciate your early advice as to the procedure to be followed in connection with the forthcoming annual meeting.

As you know, for the past several years, annual notices of the meeting of the stockholders of record as of a specified date have been sent out. Meetings were held each year but due to lack of quorum were adjourned sine die.

Yours very truly,

THE WESTERN PACIFIC
RAILROAD CORPORATION.

/s/ M. J. CURRY,
President.

[Marginal Note]: Notice of meeting to stockholders of record as of September 11, 1946.

The Corporation Trust Company
Wilmington 99,
100 West 10th Street
Wilmington 7581

October 1, 1946.

Mr. M. J. Curry, President
The Western Pacific Railroad Corporation
10 Perth Avenue
New Rochelle, New York

Dear Sir:

The annual meeting of stockholders of your company was held at this office today at 12:00 Noon. The meeting was attended by Mr. Russell M. Van-

Defendants' Exhibit No. 54—(Continued)

Kirk of Farlee & Co. who represented in person his personal holdings of 4,500 shares of preferred stock, the holdings of Farlee & Co. of 2,141 preferred shares, that of Joan M. VanKirk the holder of 1,000 preferred shares, and John H. VanKirk the holder of 1,000 preferred shares. Mr. Harold S. Baird was also present in person representing 1,100 shares. This made the total representation in person 9,741 shares and your proxy, which you sent us for 10 shares, brought the total representation in person and by proxy to 9,751 shares.

The meeting was adjourned sine die without taking any action.

We are preparing the minutes of the meeting which we will send you tomorrow.

For your information, we might state that Mr. VanKirk made a transcript of a number of the stockholders from the list which was made available at the meeting.

Yours very truly,

THE CORPORATION TRUST
COMPANY.

/s/ L. H. HERMAN,
Assistant Secretary.

LHH:RCW

[Marginal Notes]: Noted MCV 10/3/46 copy del'd to Mr. Nicodemus 10/3/46.

[Stamped]: Received Oct. 3, 1946 The Western Pacific Railroad Corporation.

Defendants' Exhibit No. 54—(Continued)

The Corporation Trust Company

October 2, 1946.

(Copy)

Re: The Western Pacific Railroad Corporation

Mr. Russell Van Kirk

c/o Farlee & Co.

37 Wall Street

New York, New York

Dear Mr. Van Kirk:

In reference to your inquiry at the annual meeting yesterday, the cost of addressing and mailing postal cards to stockholders of the above named corporation will amount to \$25.00 per thousand. It is estimated there are presently approximately 4400 stockholders so that the cost will amount to approximately \$111.00.

As explained, the approval of the corporation should be attained before we can address and mail any communication to stockholders. It will also be necessary to furnish a sufficient supply of the postal cards to be addressed and mailed.

We are forwarding a copy of this letter to Mr. Curry, President of the corporation, as a matter of information.

Very truly yours,

THE CORPORATION TRUST
COMPANY.

2070 *Western Pacific R.R. Corp., et al., vs.*

Defendants' Exhibit No. 54—(Continued)

/s/ H. E. GRANTLAND,
Assistant Secretary.

HEG:EMT

cc Mr. M. J. Curry

[Stamped]: Received Oct. 4, 1946, The Western
Pacific Railroad Corporation.

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 55

March 8, 1945.

State of Delaware
Office of the Attorney General
Dover, Delaware

Att. Hon. William H. Bennethum:

Gentlemen:

Referring to your letter dated February 4, 1945,
in regard to franchise taxes for 1942 and 1943, in
arrears:

As there has been no improvement in the finan-
cial condition of this corporation from what it was
when we addressed a letter to your State Tax De-
partment on March 27, 1943, a copy of which was
forwarded to you with our letter dated March 21,
1944, this is to respectfully request that you grant
a one-half rate for the years 1942 and 1943 and
reduce the statutory interest rate from 12% to 4%

Defendants' Exhibit No. 55—(Continued)

per annum, as was agreed to covering the years 1940 and 1941 and, at the same time, extend to July 1, 1945, the time for payment thereof.

Inasmuch as April 1st is the deadline for the payment of the 1942 tax, your early and favorable consideration of this request will be very much appreciated.

Yours very truly,

/s/ M. J. CURRY.

cc The Corporation Trust Company
100 West Tenth St.
Wilmington 99, Delaware
Att. Mr. L. H. Herman
Wilmington Asst. Secy.

bcc. Messrs. Pierce & Greer—Att. Mr. F. C. Nicodemus, Jr.

June 28, 1944.

The Corporation Trust Company
100 West Tenth Street
Wilmington 99, Delaware.

Attention Mr. L. H. Herman, Wilmington
Assistant Secretary.

Gentlemen:

Your letter of June 15, 1944:

Herewith this Corporation's check No. 33, payable to the order of State of Delaware, State Tax

Defendants' Exhibit No. 55—(Continued)

Department in the sum of \$1,363.50 (\$1,262.50 principal and \$101.00 penalty interest—July 1, 1942 to July 1, 1944) in payment of delinquent 1941 franchise tax.

It will be appreciated if you will handle this for credit and furnish us with proper receipt.

Yours very truly,

/s/ M. J. CURRY.

bcc. Mr. F. C. Nicodemus, Jr.

March 21, 1944.

State of Delaware
Office of Attorney General
Dover, Delaware.

Att. Hon. William H. Bennethum, Deputy
Attorney General.

Gentlemen:

Referring further to your letter dated February 4, 1944, and to our letter dated February 10, 1944, to the Corporation Trust Co., Wilmington, Del., with copy to you, in regard to franchise taxes in arrears:

As the financial condition of this Corporation is practically unchanged from what it was when we addressed a letter to your State Tax Department, Wilmington, Del., on March 27, 1943, (copy attached) relative to franchise taxes for the year 1940, in arrears, and your Tax Department Board

Defendants' Exhibit No. 55—(Continued)

granted a one-half rate for the years 1940 and 1941 and reduced the statutory rate to 4% per annum, and also granted an extension of time for payment of the 1940 tax to July 1, 1943, this is to respectfully request a similar extension to July 1, 1944, for payment of the 1941 tax.

A prompt response will be very much appreciated.

Yours very truly,

/s/ M. J. CURRY.

cc. Corporation Trust Company
100 West 10th Street
Wilmington, Delaware.
Messrs. Pierce & Greer.

[Marginal Note]: Mr. Campbell read this while in my office and said "Fine"—"Okay."

/s/ MJC.

3/22/44

April 12, 1943.

State of Delaware
State Tax Department
843 King Street
Wilmington, Delaware.

Att. Mr. P. M. Bourdon, Secretary.

Dear Sirs:

I am in receipt of your letter of April 9th, in reply to mine of March 27, 1943, relative to this

Defendants' Exhibit No. 55—(Continued)
 Corporation's franchise taxes for the years 1940 and 1941, in which you advise that your Board has granted the one-half rate for those years and reduced the statutory interest rate from 12 per cent to 4 per cent per annum, and has also granted an extension to July 1, 1943, pending disposition of this matter in order to avoid forfeiture of our charter on April 1, 1943.

This action on the part of your Board is very much appreciated and, as stated in my letter to you of April 8th, it will be presented at the next meeting of our Board of Directors for consideration.

Yours very truly,

/s/ M. J. CURRY.

cc. The Corporation Trust Company
 100 West Tenth St.
 Wilmington, Delaware.
 Att. Mr. L. H. Herman.

bcc. Mr. F. C. Nicodemus, Jr.

With copy of letter from the State Tax Board.

M. J. CURRY.

Defendants' Exhibit No. 55—(Continued)

Pierce & Greer
40 Wall Street
New York

January 21, 1942.

Mr. M. J. Curry
Secretary
The Western Pacific Railroad Corporation
37 Wall Street
New York City

Dear Sir:

Replying to your letter of January 2, 1942, we enclose herewith a memorandum dealing with the possible consequences to the Corporation of delinquency in the payment of Delaware franchise taxes.

We suggest that this memorandum be submitted to the Board at its next meeting as the report of counsel on the matter. Mr. Campbell expects to attend the meeting and will be glad to make an oral report on the subject covered by the memorandum should the Board so desire.

Yours very truly,

PIERCE & GREER.

[Stamped]: Received Jan. 21, 1942, The Western Pacific Railroad Corporation.

Defendants' Exhibit No. 55—(Continued)

The Western Pacific Railroad Corporation

Memorandum as to effect of non-payment of
Delaware franchise taxes

At a meeting of the Board of Directors of The Western Pacific Railroad Corporation, held on December 18, 1941, the Chairman reported that the Delaware franchise taxes for the years 1939 and 1940, due July 1, 1940 and July 1, 1941, respectively, in the amount of \$2,525 each, have not been paid and that interest is accruing thereon at the rate of 1% per month from said due dates, and further that under the Delaware Statutes payment of the 1939 tax, plus accrued interest, must be made not later than April 1, 1942, or the Corporation's charter will be voided.

Whereupon, after discussion, the Board adopted the following resolution:

“Resolved, that the question of payment of these taxes be referred to Counsel, for investigation, to determine what effect it may have on the Corporation if payment is not made and to report to the Board the result of such investigation at its next meeting.”

The statute which voids the charter of a Delaware corporation for failure to pay its franchise tax for two years is Section 71 of the Delaware Franchise Tax Law, reading as follows:

Defendants' Exhibit No. 55—(Continued)

“If any corporation, accepting the provisions of the Constitution of the State of Delaware and coming under the provisions of the General Corporation Law of this State, or any corporation which has heretofore filed or may hereafter file a certificate of incorporation under the provisions of the said law, shall for two consecutive years neglect or refuse to pay the State any franchise tax or taxes, which has or have been, or shall be assessed against it, or which it is required to pay under the provisions of this Article, the charter of such corporation shall be void, and all powers conferred by law upon such corporation are declared inoperative, unless the State Tax Board shall for good cause shown to it, give further time for the payment of such tax or taxes, in which case a certificate thereof shall be filed by the said Board in the office of the State Tax Department stating the reason therefor.”

Then follows Section 72 of the Franchise Tax Law, which directs the State Tax Department to report such delinquent corporations to the Governor and further directs the Governor forthwith to issue his proclamation declaring that the charters of these corporations are repealed. Said Section 72 reads as follows:

“On or before the First Tuesday of January in each year, the State Tax Department shall

Defendants' Exhibit No. 55—(Continued)
report to the Governor a list of all the corporations, which for two years next preceding such report, have failed, neglected or refused to pay the franchise taxes assessed against them or due by them, under the laws of this State, and the Governor shall forthwith issue his proclamation declaring that the charters of these corporations are repealed.”

Section 73 of the Franchise Tax Law provides that the proclamation of the Governor be filed in the office of the Secretary of State, that it be advertised and that a certified copy thereof be transmitted to the Recorder of each County in the State and that

“* * * each Recorder shall, upon receipt of such certified copy, forthwith mark in brief upon the margin of the record of the Certificate of Incorporation named in said proclamation, which is of record in his office, the fact that the charter of said corporation is repealed, and the date of said repeal.”

Section 74 of the Franchise Tax Law provides that any corporation, firm, company, association, person or persons

“* * * who shall exercise or attempt to exercise any power under the Certificate of Incorporation of any corporation, which shall have been proclaimed by the Governor, after

Defendants' Exhibit No. 55—(Continued)

the issuance of such proclamation, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding One Thousand Dollars (\$1,000) or by imprisonment not exceeding one (1) year, or both, in the discretion of the Court."

If the charter of a Delaware corporation be repealed pursuant to the above statutes for the non-payment of franchise taxes, does it follow under the Delaware law that such corporation has ceased to exist, that it is dead and cannot be revived?

It has been held that where a charter is repealed for non-payment of taxes, there is a dissolution by operation of law. (*Berle v. Crutcher*, 60 F. (2d) 440 (C.C.A. 8th)).

But in and by Section 42 of the Stock Corporation Law, the Delaware Legislature has declared that corporations after dissolution shall continue for purposes of suit. Said Section reads as follows:

"All corporations, whether they expire by their own limitations, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock but not for the purpose of continuing

Defendants' Exhibit No. 55—(Continued)

the business for which said corporation shall have been established; provided, however, that with respect to any action, suit, or proceeding begun or commenced by or against the corporation prior to such expiration or dissolution and with respect to any action, suit or proceeding begun or commenced by or against the corporation within three years after the date of such expiration or dissolution, such corporation shall only for the purpose of such actions, suits or proceedings so begun or commenced be continued bodies corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed."

Moreover, Section 74 of the Stock Corporation Law sets up the machinery whereby a corporation whose charter has become inoperative by law for non-payment of taxes may procure a restoration of its charter, and provides that such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its charter by such corporation, its officers and agents during the time when such charter was inoperative or void or after its expiration by limitation, with the same force and effect and to all intents and purposes as if said charter had at all times remained in full force and effect.

It is clear from the foregoing that to allow the 1939 franchise tax of The Western Pacific Railroad

Defendants' Exhibit No. 55—(Continued)

Corporation to remain unpaid after April 1, 1942, will not result in the complete and final extinguishment of said corporation.

The scope and effect of the statutory provisions above referred to have been considered and defined in the following leading cases:

Watts v. Liberty Royalties Corporation, 106 F. (2d) 941

Eastman Gardiner & Co. v. Warren, 109 F. (2d) 193

In *Watts v. Liberty Royalties Corporation*, it was held that a Delaware corporation does not cease to exist on suspension or forfeiture of its charter for non-payment of annual license fees and that it may bring proceedings for reorganization under the Federal Bankruptcy Act (77B) even after the three years allowed by the Delaware law to wind up its affairs, in view of the Delaware statutes providing for revival or reinstatement of the charter.

The appellant contended that the corporation was prohibited from maintaining a voluntary action for reorganization by the fact that more than three years prior to the filing of its petition its charter had been forfeited for the non-payment of fees to the state of Delaware, and claimed that the failure to pay such fees automatically forfeited and cancelled its charter and its corporate franchises and that the only power the corporation possessed thereafter was to wind up its affairs within the three

Defendants' Exhibit No. 55—(Continued)

year period provided for by the laws of Delaware.

The Court, after referring to the various applicable Delaware statutes (which have been referred to in this memorandum) said:

“These sections of the Delaware code, when read together, are entirely inconsistent with the theory that a corporation whose charter has been suspended or forfeited for the failure to pay fees is dead and that it has ceased to exist. The Supreme Court in the Illinois case says that such a corporation, under the Illinois law, is ended for all time and for all purposes. That is not so under the laws of Delaware. If it were, life could not be breathed into the corpse, it could not be revived nor reinstated, nor could all things done by the corporation during its period of suspension be validated by its reinstatement.

Provisions similar to those in the Delaware law are found in the laws of many of the states and have frequently been interpreted by the courts. It has generally been held that where charter laws provide for a cancellation and forfeiture of a corporate charter and corporate powers for failure to pay fees and also provide for a reinstatement of the powers of the corporation and for restoration of its charter upon the payment of its fees, the penalty provisions providing for the forfeiture of its charter rights are largely for the purpose of

Defendants' Exhibit No. 55—(Continued)
collecting the charter fees and do not end the life of the corporation. (Citing California, Oregon, Washington and Colorado cases.)

So long as a corporation may be reinstated by the payment of delinquent fees and have validated all of its acts that were done while its powers were suspended, the corporation is not dead. Its powers are only in suspension and reinstatement of its charter restores it to all of its powers and validates all of its acts, including the acts done while its charter was suspended. The corporation had power to institute this proceeding for its reorganization under Section 77B."

Eastman, Gardiner & Co. v. Warren was an action against a Delaware corporation for personal injuries sustained by the appellee. The trial court upheld a demurrer to a special plea in abatement, alleging that the appellant, the Delaware corporation, had no legal existence because, since the institution of the action it had been dissolved under the laws of that State, and the plea further set forth that prior to such dissolution the corporation had sold all of its assets and distributed the proceeds to its debtors, paying only a portion of its indebtedness; that the corporation owned no property, either real, personal or mixed, that none was distributed to its stockholders, and that therefore the Court below was without jurisdiction to proceed further in the cause. In holding that the judgment of the

Defendants' Exhibit No. 55—(Continued)
lower Court should be affirmed, the Circuit Court of Appeals said in its opinion:

“The argument of appellant ignores the fact, of which we take judicial notice, that the statutes of Delaware extended appellant's life as a corporation for three years for the purpose of suing and being sued. See section 2074 of the Revised Code of Delaware for 1935. As an additional safeguard, section 2078 of said code expressly provides that dissolution shall be no cause for abatement of any action pending on the date of the dissolution of any corporation. *Harned v. Beacon Hill Real Estate Co.*, 9 Del. Ch. 411, 84 A. 229. Section 2075 permits the appointment of receivers, but their appointment is not mandatory. Statutes prolonging the existence of a dissolved corporation are remedial and should be given a liberal construction. *Helvering v. South Penn. Oil Co.*, 62 App. D. C. 373, 68 F. 2d 420.

It is contended that the above statutes do not apply where the corporation, before dissolution, disposed of all of its assets to its creditors. No decision of the State of Delaware is cited to show that the courts of that state have so construed its statutes, and our reading thereof does not lead us to such conclusion. We think the allegations of the plea did not prevent appellee from prosecuting his suit, and the judgment of the district court should be affirmed.”

Defendants' Exhibit No. 55—(Continued)

April 18, 1945.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

Enclosed, for your information, is copy of letter dated April 16, 1945, from the State Tax Board of Delaware, in regard to adjustment of franchise taxes in arrears.

Yours very truly,

/s/ M. J. CURRY.

cc. Messrs. Whitman, Ransom, Coulson & Goetz.

April 18, 1945.

State of Delaware
State Tax Department
843 King Street
Wilmington 99, Delaware.

Attention Mr. P. M. Bourdon, Secretary.

Dear Sirs:

This will acknowledge, with thanks, receipt of your letter dated April 16, 1945, in regard to adjustment in this Corporation's account in connec-

Defendants' Exhibit No. 55—(Continued)
tion with franchise taxes for the years 1942 and
1943.

Yours very truly,

/s/ M. J. CURRY.

cc. Secretary of State
State Tax Department
Dover, Delaware
Corporation Trust Company
100 West Tenth St.
Wilmington 99, Delaware.
Att. Mr. L. H. Herman, Wilmington Asst. Secy.
Mr. F. C. Nicodemus, Jr.

bcc. Messrs. Whitman, Ransom, Coulson & Goetz.

March 23, 1945.

Mr. James K. Polk
Whitman, Ransom, Coulson & Goetz
40 Wall Street
New York 5, N. Y.

Dear Mr. Polk:

You have copy of our letter dated February 21, 1945, addressed to Messrs. Pierce & Greer, Counsel for this Corporation, in regard to Delaware franchise taxes for the years 1942 and 1943, in arrears.

I now enclose copy of our letter dated March 8th, to office of Attorney General, State of Delaware, and copy of reply, dated March 22nd, from the Secretary of the State Tax Board, together with

Defendants' Exhibit No. 55—(Continued)

two copies of form 1105, to be filled in, signed, sworn to and returned not later than March 29th.

Will you please supply the pertinent facts required and return to me for execution and acknowledgment and forwarding, and oblige.

Yours very truly,

/s/ M. J. CURRY.

cc. Mr. F. C. Nicodemus, Jr.

“Petition for commutation of Franchise Taxes.”

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 56

The Western Pacific Railroad Company
Mills Building, 220 Montgomery Street
San Francisco, California

File A-29-1
February 8, 1941

Mr. M. J. Curry, Vice President,
The Western Pacific Railroad Company,
37 Wall Street,
New York City, N. Y.

Dear Sir:

Are you now in a position to reply to my letter of December 18, 1940, quoted as follows:

“While the Excess Profits Tax on declared value basis provides for individual returns for corpora-

Defendant's Exhibit No. 56—(Continued)
tions, it is noted that the Excess Profits, Second Revenue Act of 1940 which is in addition to the former tax, provides under Section 730, for consolidated returns which may include all affiliated companies without restriction to railroad companies as is the case with income tax returns.

Will you please advise if it is the intention of the corporation to file a consolidated return for 1940 under this Excess Profits Tax, Second Revenue Act of 1940?"

Yours truly,

/s/ D. C. DeGRAFF.

[Stamped]: Received Feb. 13, 1941. The Western Pacific Railroad Corporation.

February 10, 1941

Air Mail.

Mr. D. C. DeGraff, General Auditor,
The Western Pacific Railroad Company,
Mills Building,
San Francisco, California.

Dear Mr. DeGraff:

Referring to your letter of December 18, 1940, regarding the intention of this corporation to file a consolidated return for 1940 under the Excess Profit Tax Second Revenue Act of 1940.

I have given this matter careful thought and de-

Defendant's Exhibit No. 56—(Continued)

liberation and feel that in accordance with the provisions of Section 730a the most equitable arrangement would be for us to dispense with the filing of a consolidated return in this particular instance.

Will you please forward copies of your completed returns as filed with the Internal Revenue Department.

Very truly yours,

s/ M. J. CURRY.

[Marginal Note]: Disregard, will file Form 1121.

[Western Union Telegram Form]

1941 Mar PM 6 42

FU2 CAK—San Francisco, Calif. 6 1026A

M J Curry, Vice President:

The Western Pacific Railroad Co 37 Wall St
NYK:

Do You Wish Me to Prepare Tentative Declared Value Excess Profits Tax Returns for Each of the Four Railroad Companies Included in Consolidated Income Tax Return or Will the Final Returns I Presume You Will Have Prepared in New York Same as Last Year File All Requirements in this Respect. Presume Also You Have Secured Extension of Time for Filing These Returns and Consolidated Income Tax Return.

D. C. DeGRAFF.

Defendant's Exhibit No. 56—(Continued)

Western Union Telegram Form
Day Letter

New York, March 7, 1941

D. C. DeGraff

Western Pacific Railroad Company

Mills Building

San Francisco, Calif.

Telegram 6th relative tax returns. Find in look-into matter, our accountant, who resigned in February, misunderstood just what is required. Holding company will file consolidated return as in previous years. Extension date for filing has been granted to June sixteenth. You may therefore disregard our letter February tenth and telegram March third prepare and forward air mail two copies tentative declared value excess profits tax returns for each of four railroad companies which we will attach to the Corporation's tentative consolidated return which will be filed on or before March fifteenth. Also please forward Forms eleven twenty-two as you have done in past.

M. J. CURRY.

Defendant's Exhibit No. 56—(Continued)

Western Union Telegram Form

New York, March 1, 1945

D. C. DeGraff

Western Pacific Railroad Company

526 Mission Street

San Francisco, Calif.

Extensions to June 15th have been received for filing following consolidated income and excess profits tax returns: For the Corporation for entire year and its subsidiaries for period January 1 to May 1, 1944; Western Pacific Company and its subsidiaries covering period May 1st to end of year; Western Realty and its subsidiary covering period May 1 to end of year. Mr. Polk suggests you follow procedure outlined herein:

By March 15th we will file here tentative consolidated returns for Corporation for entire year including its subsidiaries to May 1st and you will file in San Francisco tentative consolidated return of Company and its subsidiaries from May 1st to end of year and consolidated return of Western Realty and its subsidiary from May 1st to end of year. As you know, one-fourth estimated tax liability must be paid at that time. These tentative returns are not binding so if after further calculation it is found more advantageous to file separate returns we will do so before June 15th.

Have duplicate originals Forms 1122 and 1122E, marked "tentative," for each subsidiary of Corpora-

Defendant's Exhibit No. 56—(Continued)
tion covering period to May 1st executed by proper officers; file one copy with Collector in San Francisco sending other copy here for filing. Have these forms also executed for each subsidiary of Western Pacific Company and Western Realty for period May 1st to end of year and file in San Francisco. Attach to all these forms photostatic copy of application for extension and letter granting such extension, which are being airmailed you today. Also attach completed schedules as required in letter granting extensions.

Prepare tentative declared-value returns for Company and each subsidiary and for Western Realty and Delta for entire year and have duplicate originals executed by proper officers mailing one executed form of each here and filing other in San Francisco before March 15th attaching photostatic copies of application and letter granting extensions.

Would like receive copies of all forms mentioned above for our files. Please acknowledge receipt and understanding this wire and confirm filing by wire.

M. J. CURRY

cc. Confirming (ail mail) with photostatic copies of extension and letter granting extension
Mr. James K. Polk

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 57

Via Air Mail—

July 14, 1942.

Mr. D. C. DeGraff, General Auditor,
The Western Pacific Railroad Company,
526 Mission Street,
San Francisco, Calif.

Dear Mr. DeGraff:

We are looking into the questions you raised in your letter of July 7th, File A-29-1, in connection with 1942 income tax accruals, but before answering we would appreciate reply from you on the following:

With reference to the losses sustained account abandonment of the Deep Creek Railroad Company, it has occurred to us that this loss might be considered by the Internal Revenue Bureau as a 1939 loss in view of the fact that the Interstate Commerce Commission issued its certificate permitting this abandonment July 1, 1939; operation of the line was abandoned as to interstate and intrastate traffic in August, 1939; highest bid for scrap was accepted in August, 1939; and copy of letter we have on our files, dated November 7, 1939, to Mr. Matthew from Mrs. Tyler, which reads as follows:

"Its investment in road and equipment of \$504,029.92 which realized only \$25,698.50 will be written off to profit and loss in 1939. The company will

Defendants' Exhibit No. 57—(Continued)
then have no assets except the cash on hand and will not be engaged in any business."

* * *

"Mr. DeGraff and I have conferred on any possible undesirable result of 'forgiving' any unpaid balance of debt of our Reorganization Trustees against the Deep Creek. There could be no adverse tax effect if done in 1939 as in this year there has been a total writing off of the investment in road and equipment exceeding \$500,000 except for the approximate sum of \$25,000 received. This would greatly exceed any gift to capital that could be made by forgiving outstanding indebtedness."

"I have written thus fully concerning the status of Deep Creek Railroad Company because Mr. Elsey is desirous of winding up its affairs as soon as practical. As stated above the salvage job by the purchaser of the railroad as scrap will be completed shortly and the Auditor is winding up the small outstanding interline accounts. * * *"

As we cannot find in our records any information as to why this investment, for income tax purposes, was charged off in 1940 instead of 1939, as we feel it should have been in view of the facts recited above, please advise.

Yours very truly,

/s/ M. J. CURRY,
Treasurer.

Defendants' Exhibit No. 57—(Continued)

August 25, 1942.

Via air mail—

Mr. D. C. DeGraff, General Auditor,
The Western Pacific Railroad Company,
526 Mission Street,
San Francisco, Calif.

Dear Mr. DeGraff:

With further reference to 1942 income tax accruals:

At the time our 1940 and 1941 tax returns were prepared, question arose as to which of the two years (1939 or 1940) the Deep Creek loss could be utilized. It was decided this was immaterial for the same reasons as stated in your letter, namely, that the income deficits for 1939 and 1940 were so large it really made no difference in the return for either year and the 1941 carryover would remain the same. However, we made a memorandum of this with the idea of going into the matter more thoroughly before it became necessary to make up our 1942 returns. Now that the question has come up it will enable us before filing the 1942 returns to reach a definite decision in the matter.

As stated in my telegram of the 14th, we are still undecided on the Deep Creek loss. From the information contained in our records it appears this loss should be charged off in 1939, as it is our understanding the Revenue Bureau has ruled such losses should be written off the year the securities have been ascertained as worthless. However, due to

Defendants' Exhibit No. 57—(Continued)
the large amount involved, we would not want to take it out of 1940 unless we are certain that there is no possible reason for keeping it in that year. Therefore, we should like some more information from you to support this, such as, when did title for the scrap pass to purchaser? When was scrap entirely removed? When was payment for the scrap received? In other words, any additional reason you can supply as to why this loss should be written off in 1940, other than ICC instructions that adjusting entries be made in that year, which we understand is not sufficient evidence to satisfy the Internal Revenue Bureau.

After we have determined for income tax purposes the proper year in which this loss was sustained, there are other factors which must be considered, as you know, and which may effect the Revenue Bureau's decision as to its being allowed. I mention this for the reason you can no doubt give us additional information which will be helpful in determining the question.

First, it may be considered by the Bureau as an inter-company transaction on a consolidated return, which, in some cases has been disallowed.

Secondly, if we feel it will be allowed, the loss must be adjusted, as the Bureau has ruled that losses on advances to affiliated corporations are allowable only to the extent of the excess of the amount of the advances due over the amounts of the operating losses of the affiliate, which in prior years offset

Defendants' Exhibit No. 57—(Continued)
taxable income on consolidated returns. In other words, it should not be deducted twice.

Again, it might be considered in part as a contribution to capital.

So, as stated above, before arriving at a decision it would be appreciated if you can give us this additional information.

With reference to the questions raised in your letter of July 7th as to why items of 1941 income should affect carryover of previous years: Item 26 of the "Instructions for Form 1120" for 1941, Step III—"Conversion of Net Operating Loss Carryover into Net Operating Loss Deduction" fully answer this question. However, this will have no effect on the 1942 Carryover.

The \$100 dividends mentioned in next to last paragraph of your letter should be adjusted as stated.

While on the subject of adjustments, if and when Internal Revenue Examiner inspects the Western Realty income tax return for 1941, we suggest his attention be called to the fact that net operating loss deduction was omitted from the 1941 return and a refund is therefore due.

Further, in connection with setting up of 1942 income tax accruals, we estimate the Western Pacific Railroad Corporation's income deficit for the year 1942 will be somewhere between \$480,000 and \$485,000.

Yours very truly,

/s/ M. J. CURRY.

[Endorsed]: Filed Feb. 18, 1949.

DEFENDANTS' EXHIBIT No. 58
(Identification only)

September 17, 1945

Wood, Walker & Co.,
63 Wall Street,
New York 5, N. Y.

Attn. Miss M. Abels,
Statistical Department

Gentlemen:

Your letter of September 13th, addressed to Mr. E. C. Bates, Treasurer of this Company, has been referred to this office for reply.

I notice that your communication was sent to Mr. Bates as Treasurer of The Western Pacific Railroad Corporation and I am therefore a bit uncertain as to just what you may be trying to determine.

With respect to the stock of The Western Pacific Railroad Company, I think that perhaps the best explanation is that contained in our 1944 annual report under the heading of "Taxes" which is quoted below:

"When reference is made to the Company's income for 1944 and 1943, consideration must be given to the fact that no Federal income and excess profits tax charges were included for the first four months of 1944 nor for the year 1943.

"Prior to the period of reorganization, which began August 2, 1935, and through 1943, the Company's tax returns had been made by the

then parent, The Western Pacific Railroad Corporation, a holding corporation which owned all of the Company's preferred and common stock, except directors' qualifying shares. The holding corporation filed a consolidated return for itself and its various subsidiaries, of which The Western Pacific Railroad Company was one.

"The plan of reorganization for The Western Pacific Railroad Company was confirmed on October 11, 1943, and found the preferred and common stock (owned by the holding corporation) to be "without equity or value." As a result of this loss, the consolidated return indicated no liability for 1943 Federal income or excess profits taxes. To provide against the contingency that liability of the Railroad Company for some taxes in respect of 1943 might be subsequently asserted by the Commissioner of Internal Revenue, the Reorganization Trustees obtained authority of the Court to set aside a reserve fund of \$7,100,000 invested in Government securities.

"As a part of the proceedings for effectuating the plan of reorganization, the Company's preferred and common stocks owned by the holding corporation were transferred to the Reorganization Committee on May 1st, 1944. A consolidated tax return covering the first four months was filed by the holding corporation which reflected no liability for 1944 Federal income and excess profits taxes for that period.

“To provide against the contingency that liability of the Railroad Company for some taxes for the first four months of 1944 might be subsequently asserted by the Commissioner of Internal Revenue, your Directors on March 26th, 1945, established an additional reserve fund in the amount of \$3,000,000 to be combined with the previously established reserve fund of \$7,100,000. The additional reserve fund has also been invested in Government securities. This entire reserve will be held intact to protect the cash position of the Company in the event it should be later necessary to make any payment of taxes or interest resulting from an administrative or judicial ruling adverse to the Company's contention that it was not liable for any Federal income or excess profits taxes for the calendar year 1943 and the first four months of 1944.”

You will note in the fourth paragraph of the above quotation that the corporation's holdings of the Company's stock were transferred to the Reorganization Committee on May 1, 1944, as part of the proceedings for effectuating the plan. If you are attempting to ascertain the value of the stock of the Corporation, I would suggest that you communicate directly with Mr. M. J. Curry, Room 5205, 40 Wall Street, New York 5, N. Y., who is the President of The Western Pacific Railroad Corporation.

As a matter of information, prior to its transfer to the Company's reorganization committee, all of

the stock of the Company was held by The Western Pacific Railroad Corporation and it was not dealt in on the various security exchanges. That situation, of course, no longer obtains since the Company's reorganization effected as of December 29, 1944.

Very truly yours,

/s/ CHARLES ELSEY.

bcc—Mr. M. J. Curry.

DEFENDANTS' EXHIBIT No. 59

(Identification only)

Schedule of All Purchases and Sales of Western Pacific
Railroad Corporation Preferred Stock

Date	Broker for Vendor	Purchases		
		No. of Shares	Price Per Share	Total Cost
1944				
2/23	Troster, Currie & Summers	500	$\frac{3}{8}$	\$ 218.75
2/23	E. F. Hutton & Co.	1000	$\frac{3}{8}$	391.35
2/28	L. D. Sherman & Co.	200	$\frac{3}{8}$	100.00
2/29	Troster, Currie & Summers	200	$\frac{3}{8}$	100.00
3/1	Eisele & King, Libaire, Stout & Co.	200	$\frac{1}{2}$	102.50
3/2	Hill, Thompson & Co.	35	$\frac{3}{8}$	17.50
3/3	Moore, Leonard & Lynch	100	$\frac{1}{2}$	50.00
3/18	Hill, Thompson & Co.	500	.65	325.00
3/18	M. S. Wien & Co.	200	$\frac{5}{8}$	135.00
3/20	Newburger & Hano	600	$\frac{1}{2}$	375.00
6/26	Merrill, Lynch, P. F. & B.	100	$\frac{3}{8}$	37.50
8/21	Frank C. Moore Co.	250	$\frac{1}{2}$	140.62
9/5	L. D. Sherman & Co.	800	$\frac{1}{2}$	450.00
10/9	Williams & Imbrie	2000	$\frac{5}{8}$	1,375.00
10/9	Friedman & Co.	200	$\frac{5}{8}$	125.00
12/27	M. S. Wien & Co.	100	$\frac{1}{4}$	31.25
12/28	Franklin & Co.	3538	$\frac{1}{2}$	1,990.13
1946				
1/11	M. S. Wien & Co.	600	$\frac{1}{2}$	337.50
1/16	M. S. Wien & Co.	500	$\frac{1}{2}$	281.25
9/20	L. D. Sherman & Co.	1000	$2\frac{3}{8}$	2,510.00
9/30	G. A. Saxton & Co.	200	3	600.00
9/30	M. S. Wien & Co.	200	3	600.00
Totals.....		13023		\$10,293.35

Mr. Van Kirk made no sales of said stock

Defendants' Exhibit No. 59—(Continued)

J. S. Farlee & Co.

Confirmations of All Purchases and Sales of Preferred Stock, to April 10, 1948

Trade Date	Purchases			Sales		
	Number of Shares	Price Per Share	Total Cost (incl. comm.)	Number of Shares	Price Per Share	Total Net Proceeds
						Balance of Shares Held
1944						
1/10.....	200	$\frac{1}{8}$	\$ 25.00			200
2/16.....	200	$\frac{3}{8}$	75.00			400
2/16.....	100	$\frac{3}{8}$	37.50			500
2/17.....	200	$\frac{1}{2}$	100.00			700
2/18.....	200	$\frac{1}{2}$	100.00			900
2/18.....	200	$\frac{1}{2}$	100.00			1,100
3/16.....	6	$\frac{1}{2}$	3.00			1,106
3/20.....	160	$\frac{5}{8}$	103.20			1,266
3/31.....	400	$\frac{9}{16}$	250.00			1,666
12/6	12	$\frac{1}{4}$	3.00			1,678
12/6	100	$\frac{3}{8}$	43.75			1,778
12/18.....	70	$\frac{1}{4}$	21.88			1,848
12/19.....	200	$\frac{1}{4}$	75.00			2,048
12/19.....	100	$\frac{3}{8}$	37.50			2,148
12/20.....	24	$\frac{1}{4}$	6.00			2,172
1945						
3/19.....	300	$\frac{3}{8}$	150.00			2,472
3/20.....	200	$\frac{1}{2}$	100.00			2,672
4/6	7	$\frac{1}{4}$	1.75			2,679
4/9	243	$\frac{5}{8}$	151.88			2,922

Defendants' Exhibit No. 59—(Continued)

J. S. Farlee & Co. (Cont.)

Confirmations of All Purchases and Sales of Preferred Stock, to April 10, 1948

Trade Date	Purchases			Sales		
	Number of Shares	Price Per Share	Total Cost (incl. comm.)	Number of Shares	Price Per Share	Total Net Proceeds
1945						
5/11.....	100	1 1/4	125.00			3,022
5/11.....	200	1 1/8	225.00			3,222
5/11.....	200	1 3/16	237.50			3,422
5/11.....	100	1 1/8	112.50			3,522
5/11.....	500	1 1/4	625.00			4,022
5/11.....	500	1 1/4	625.00			4,522
5/11.....	500	1 1/4	625.00			5,022
5/11.....	100	1 1/4	125.00			5,122
5/11.....	300	1 1/4	375.00			5,422
5/12.....	500	1 1/8	562.50			5,422
6/5.....	100	7/8	100.00	500	1 1/4	5,522
6/5.....	200	1	200.00			5,722
10/9.....	100	5/8	62.50			5,822
10/16.....	400	1/2	250.00			6,222
10/18.....	75	1/2	46.88			6,297
10/18.....	25	5/8	15.63			6,322
10/19.....	100	5/8	62.50			6,422
10/20.....	100	5/8	62.50			6,522
10/23.....	700	1/2	393.75			7,222
10/31.....	500	1/2	281.25			7,722

Defendants' Exhibit No. 59—(Continued)

Defendants' Exhibit No. 59—(Continued)

J. S. Farlee & Co. (Cont.)

Confirmations of All Purchases and Sales of Preferred Stock, to April 10, 1948

Trade Date	Purchases			Sales			Balance of Shares Held
	Number of Shares	Price Per Share	Total Cost (incl. comm.)	Number of Shares	Price Per Share	Total Net Proceeds	
1947							
3/18.....	200	3 7/16	687.50				9,739
3/27.....				200	3 7/8	763.00	9,539
4/23.....	100	3 1/8	312.50				9,639
5/27.....	16	25/8	42.00				9,655
6/2.....	300	23/4	825.00	300	27/8	862.50	9,655
6/17.....	50	31/4	162.50	100	31/4	325.00	9,605
6/19.....	75	31/8	234.38				9,680
7/14.....				300	3 3/8	1,012.50	9,380
7/15.....	24	31/8	75.00				9,404
7/18.....				100	3 1/2	350.00	9,304
7/23.....	100	3 1/4	325.00				9,404
7/24.....	20	31/8	62.50				9,424
8/29.....	15	3 3/8	50.63				9,439
9/9.....				100	4 1/8	406.50	9,339
10/1.....	100	35/8	362.50				9,439
10/3.....	200	31/4	700.00				9,639
1948							
1/7.....	100	3	300.00				9,739

Defendants' Exhibit No. 59—(Continued)

1/14.....	100	31/6	306.25	200	21½	500.00	9,839
2/3.....	100	23/4	275.00	100	25/8	262.50	9,939
2/4.....	175	23/4	481.25	275	3	825.00	10,114
2/5.....	100	23/8	237.50				10,214
2/5.....	200	21/4	450.00				10,414
2/7.....							10,214
2/11.....							10,114
2/16.....							9,839
2/19.....	100	27/8	287.50				9,939
2/19.....	100	3	300.00				10,039
2/24.....				100	31/8	312.50	9,939
3/2.....	300	3	900.00				10,239
3/5.....	200	3	600.00				10,439
3/11.....	100	3	300.00				10,539
Totals.....	15,254		\$22,605.29	4,715		\$13,298.10	10,539

Defendants' Exhibit No. 59—(Continued)

Western Pacific Railroad Corp. Preferred Stock Given by Russell M. Van Kirk to Mrs. Russell M. Van Kirk and Owned and Held by Her

No. of Shares	Ctf. No.	Name	Date of Ctf.
100	D22125	William A. Plecity	Apr. 6, 1943
2	D028817	De Copper & Doremus	July 22, 1931
5	D028936	De Coppet & Doremus	Oct. 7, 1931
8	D04525	Norman Williams	July 15, 1925
5	D029126	De Coppet & Doremus	Dec. 3, 1931
10	D042694	De Coppet & Doremus	Apr. 13, 1943
10	D042687	De Coppet & Doremus	Apr. 8, 1943
100	D21735	Morgan Davis & Co.	Mar. 22, 1943
100	D19713	John S. Calvert	Mar. 24, 1941
100	D19711	John S. Calvert	Mar. 24, 1941
100	D19710	John S. Calvert	Mar. 24, 1941
8	D028661	Bertram E. Alanson	May 27, 1931
100	D8680	Bertram E. Alanson	May 11, 1931
100	D8679	Bertram E. Alanson	May 11, 1931
100	D8678	Bertram E. Alanson	May 11, 1931
100	D8677	Bertram E. Alanson	May 11, 1931
100	D8676	Bertram E. Alanson	May 11, 1931
100	D8675	Bertram E. Alanson	May 11, 1931
100	D8674	Bertram E. Alanson	May 11, 1931
100	D8673	Bertram E. Alanson	May 11, 1931
100	D21788	Ross B. Cameron	Mar. 24, 1943
1	D012495	Harrison Smith	Oct. 28, 1925
1	D03944	Harrison Smith	July 15, 1925
100	D15902	Silas Auerbach	Oct. 26, 1937
100	D18511	Samuel H. Popkin	Aug. 28, 1939
100	D18386	Samuel H. Popkin	June 8, 1939
100	D18387	Samuel H. Popkin	June 8, 1939
100	D18368	Samuel H. Popkin	May 23, 1939
100	D18371	Samuel H. Popkin	May 26, 1939
25	D037682	Harry Stowsky	May 12, 1936
7	D031369	Miss Priscilla F. Alden	Aug. 15, 1933
100	D18304	Peter A. Nygren	May 8, 1939
21	D042945	Rachel Booth Powers	Mar. 13, 1945
24	D042902	Halle & Stieglitz	Jan. 4, 1945
100	D21992	Gus Carras	Mar. 29, 1943
100	D21993	Gus Carras	Mar. 29, 1943
100	D21994	Gus Carras	Mar. 29, 1943
100	D21314	Louis Elkies	Feb. 10, 1943
100	D21315	Louis Elkies	Feb. 10, 1943
100	D21316	Louis Elkies	Feb. 10, 1943
100	D21317	Louis Elkies	Feb. 10, 1943
100	D21318	Louis Elkies	Feb. 10, 1943
25	D043255	O. Stuart White, Jr.	Sept. 24, 1946
24	D043492	Farlee & Co.	July 29, 1947
1	D043476	Farlee & Co.	June 26, 1947
5	D043513	Farlee & Co.	Sept. 12, 1947
41	D042792	Farlee & Co.	Mar. 22, 1944

	Year 1935	Year 1936	Year 1937	Year 1938	Year 1939	Year 1940
Director Charles Kisey	Same	Same	Same	Same	Same	Same
Director T.H.Schumacher	Same	Same	Same	Same	Same	Same
Director A. C. James	Same	Same	Same	Same	Same	Vacant to 3/27/40 W.O.Curtiss from 3/27/40
Director J. P. Hogan	Same	Same	J. P. Hogan to 8/29/38 Vacant from 8/29/38	--	--	Vacant to 3/27/40 H.K.Foulter from 3/27/40
Director E. W. Mason	Same	Same	Same	Same	Same	Same
Director D. C. DeGraff	DCD to 2/18/36 CFR from 2/18/36 to 3/30/36 DCD from 3/30/36	D.C.DeGraff	Same	Same	Same	Same
Director W. G. Bruen	Same	W. G. Bruen to 8/9/37 C. L. Dreit from 8/9/37	C. L. Dreit	Same	Same	Same
Director E. C. Bates	Same	Same	Same	Same	Same	Same
Director Ralph Budd	Same	Same	Ralph Budd to 3/10/38 Vacant from 3/10/38	--	--	Vacant to 3/27/40 E.W.Kinglebrig from 3/27/40
Director S. F. Ennis	Same	S. F. Ennis to 11/10/37 Vacant from 11/10/37	Vacant to 3/30/38 Reed Smoot from 3/30/38	Reed Smoot	Same	Same
Director Wm. Fries	Same	Same	Same	Same	Same	Same
Director J. E. Gorman	Same	Same	Same	Same	Same	Same
Director W. L. Hugheson	Same	Same	Same	Same	Same	Same
Director J. G. Hooper	J. G. Hooper to 8/15/35 Vacant from 8/15/35	C. W. Dooling from 2/18/36	C.W.Dooling	Same	Same	Same
Director A. W. Lonsby	A. W. Lonsby to 11/23/36 W. H. Kingsley from 12/1/36	W.H.Kingsley	Same	Same	Same	Same
Director J. L. Hagle	Same	Same	Same	Same	Same	Vacant, 1/2/40 to 3/27/40 C. F. Post from 3/27/40
Director F.J.Shepard	Same	Same	Same	Same	Same	Same
Director W. T. Smith	W. T. Smith to 8/25/36 Vacant from 8/25/36	Vacant to 3/31/37 C.F.Russell from 3/31/37	C. F. Russell	Same	Same	C.F.Russell to 5/6/40 H.J.Curry from 5/6/40
Director J.W.Williams	Same	Same	Same	Same	Same	Same

File of Secretary,
San Francisco, Calif.,
January 12, 1948.



LIST OF MEMBERS OF EXECUTIVE

	Year 1935	Year 1936	Year 1937	Year 1938	Year 1939
Member of Executive Committee (e)	T. M. Schumacher	Same	Same	Same	Same
Member of Executive Committee (d)	Charles Kasey	Same	Same	Same	Same
Member of Executive Committee	A. W. Leasby	A. W. Leasby to 12/7/36 W. M. Kingsley from 12/7/36	W. M. Kingsley	Same	Same
Member of Executive Committee	A. C. James	Same	Same	Same	Same
Member of Executive Committee	F. J. Shepard	Same	Same	Same	Same

(e) Ex-Officio. Mr. Schumacher was also Chairman of the Executive Committee.

(d) Ex-Officio. Mr. Kasey was also President of the Company.

Note: Company was reorganized effective December 29, 1944,
and Executive Committee provided for in By-Laws of
reorganized Company has not been elected.

65

Office of Secretary,
San Francisco, Calif.,
February 12, 1948.

INTERVENERS EXHIBIT No. 3

Mr. Polk:

Herewith extract from AAR weekly information letter, as per 'phone conversation of date.

M. J. CURRY

3/16/43.

Extract from Weekly Information Letter No. 504, dated March 13, 1943, from Association of American Railroads, Washington, D. C.

Internal Revenue Depreciation Account Ruling

Internal Revenue Commissioner Helvering this week refused the request of this Association that railroads desiring to change from retirement to depreciation accounting be permitted to place in the agreement an additional clause which would provide "that the reserve for accrued depreciation to the date of the change in the accounting method shall not be used in computing invested capital for excess profits tax purposes."

"Only true earned surplus or undivided profits," Mr. Helvering said, in a letter received by Mr. Fletcher, Vice President of this Association, "can be included in invested capital, and if, for any reason, the books of a railroad do not properly reflect the true surplus, such adjustments must be made as are necessary in order to arrive at the correct amount of surplus. If, for example, the depreciation actually sustained with respect to the existing property is not reflected on the books of a

corporation, earned surplus must be reduced to that extent.

“In the opinion of this office it is necessary to reduce the surplus of a corporation changing from the retirement method to the depreciation method of accounting to the extent of the amounts indicated by the reserve for depreciation required by the conditions imposed by the Commissioner before permission to change can be granted. Therefore, the Bureau cannot consent to the inclusion of the suggested clause in the agreement.”

[Endorsed]: Filed Feb. 3, 1949.

INTERVENER'S EXHIBIT No. 4

The Western Pacific Railroad Company
Western Pacific Building, 526 Mission Street
San Francisco, California

March 17, 1943.

220.4

Mr. Robert E. Coulson,
Whitman, Ransom, Coulson & Goetz,
40 Wall Street,
New York.

Dear Mr. Coulson:

This will reply to your letter of March 1st relating to depreciation on Way and Structures and its relation to Income Tax.

Intervener's Exhibit No. 4—(Continued)

Enclosed you will find a memorandum dated March 13th, with copies of attachments referred to therein, relating to negotiations between the A.A.R. and the Internal Revenue Bureau. Since Mr. DeGraff's memorandum was written, A.A.R. Accounting Circular No. 51, dated March 9th, has been received and, with its enclosures, bears on the attitude of the Internal Revenue Department concerning depreciation accounting.

It is of interest to point out that determination of loss at the time of retirement is a matter of fact, whereas the amount of depreciation accrued must always be a theoretical premise.

We will continue to use the retirement basis for establishing tax losses rather than to select one of the other alternatives offered by the Tax Commissioner. When the reorganized company takes over, the method to be followed in subsequent years can be decided upon. Any taxes now paid will probably be subject to re-examination with respect to those due from the new company, and when this whole subject is under discussion the most advantageous method can be selected.

The "brief" referred to in the attached papers, and particularly Commissioner Helvering's letter of October 24th, is one prepared by the A.A.R. dated April 20th, 1942, entitled

"A Discussion of Conditions under which Railroads May Change from Retirement to De-

Intervener's Exhibit No. 4—(Continued)
preciation Accounting with Respect to Road
Property.

Brief for Consideration of the Bureau of Internal Revenue."

We have but one copy here, but you can no doubt obtain one from Mr. Schumacher, or upon application to the Association.

Yours very truly,

/s/ CHARLES ELSEY.

enclosure

cc Mr. T. M. Schumacher . . . with encloures.—C. E.

Mr. Robert E. Coulson:

The attached Circular No. 51 and its enclosures were received after Mr. DeGraff wrote his memorandum on March 13th.

C. E.

San Francisco,
March 17, 1943.

Intervener's Exhibit No. 4—(Continued)

(Copy)

Association of American Railroads
Transportation Building
Washington, D. C.

Circular No. 51

March 9, 1943

File 223-2

E. H. Bunnell,
Vice President.

To Chief Accounting Officers:

Herewith is copy of three letters, dated October 24, 1942, December 9, 1942, and March 6, 1943, addressed to this Association by Mr. Guy T. Helvering, Commissioner of Internal Revenue, in the matter of conditions under which railroads may change from retirement to depreciation accounting.

These letters reflect the result of negotiations which the special tax committee conducted with the Bureau of Internal Revenue and are self-explanatory.

Out of an abundance of caution, attention is directed to the fact that a taxpayer desiring to change his method of accounting must make application to the Commissioner for permission so to do within 90 days after the beginning of the taxable year in which the change is to be made. For the year 1943, the 90-day period will expire March 31st.

Yours very truly,

/s/ E. H. BUNNELL.

Intervener's Exhibit No. 4—(Continued)

(Copy)

Treasury Department
Washington

March 6, 1943.

Office of
Commissioner of Internal Revenue

Address reply to
Commissioner of Internal Revenue and refer to
GC:I:GEL A-370657

Association of American Railroads,
Transportation Building,
Washington, D. C.

Attention: Mr. R. V. Fletcher

Sirs:

Reference is made to your letter of January 15, 1943, relating to the terms and conditions of the irrevocable agreement required by the Bureau upon granting permission to a railroad to change from retirement to depreciation accounting.

You suggest that an additional clause should be incorporated in the agreement reading "that the reserve for accrued depreciation to the date of the change in the accounting method shall not be used in computing invested capital for excess profits tax purposes."

Only true earned surplus or undivided profits can be included in invested capital, and if, for any reason, the books of a railroad do not properly reflect

Intervener's Exhibit No. 4—(Continued)

the true surplus, such adjustments must be made as are necessary in order to arrive at the correct amount of surplus. If, for example, the depreciation actually sustained with respect to the existing property is not reflected on the books of a corporation, earned surplus must be reduced to that extent.

Whether the depreciable assets of a corporation are valued on its books at the beginning of the taxable year at an amount in excess of their actual value at that time is a question of fact. *Cumberland Glass Manufacturing Co. v. Commissioner*, 44 F. (2d) 455; *Geuder, Paeschke and Frey Co. v. Commissioner*, 41 F. (2d) 308; *Haugh & Keenan Storage and Transfer Company v. Heiner*, 20 F. (2d) 921; *Northwestern States Portland Cement Company*, 7 B.T.A. 935.

In the opinion of this office it is necessary to reduce the surplus of a corporation changing from the retirement method to the depreciation method of accounting to the extent of the amounts indicated by the reserve for depreciation required by the conditions imposed by the Commissioner before permission to change can be granted. Therefore, the Bureau cannot consent to the inclusion of the suggested clause in the agreement.

Respectfully,

/s/ GUY T. HELVERING,

Commissioner.

2118 *Western Pacific R.R. Corp., et al., vs.*

Intervener's Exhibit No. 4—(Continued)

(Copy)

41998-2

Treasury Department
Washington

December 9, 1942.

Office of
Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
and refer to IT:EV:PU RCS

Association of American Railroads,
Law Department, Transportation Building,
Washington, D. C.

Attention: Mr. R. V. Fletcher
Vice-President

Sirs:

Receipt is acknowledged of your letter of November 20, 1942, inquiring with respect to the

Intervener's Exhibit No. 4—(Continued)

form of agreement required by the Bureau upon granting permission to a railroad to change from retirement to depreciation accounting.

Each railroad is required to irrevocably agree:

- (1) that a reserve for accrued depreciation in accordance with one of the options set forth in Bureau letter of October 24, 1942, shall be set up as of the date the change in accounting method is effective;
- (2) that the remaining sum to be recovered through depreciation allowances shall be limited to the cost or other basis, less the depreciation so accrued;
- (3) that neither the change of method nor the amount of depreciation so accrued shall have any effect on taxable net income for any year ending prior to the date of change in accounting method;
- (4) that the depreciation rates agreed to are subject to modification, if subsequent experience indicates that revision is necessary in order to spread the cost of the assets over their remaining useful lives; such revision, however, is not to be made retroactive; and
- (5) that complete depreciation accounting in accordance with all of the applicable sections of the Internal Revenue Code and Regulations shall be adopted for those accounts which are changed from retirement to depreciation accounting.

In connection with condition (1) above it is necessary to select the option and agree upon the specific reserve for each account to be depreciated before permission is granted.

In view of the fact that it will be impossible for

Intervener's Exhibit No. 4—(Continued)
the Bureau to make a detailed investigation of the depreciation basis the permission letter includes a mutual understanding that the basis may be corrected to conform to the allowable basis under the Internal Revenue Code should subsequent investigation disclose errors of cost or valuation. In the event of any such correction, the accrued depreciation would be appropriately adjusted, but no retroactive adjustment will be made to the depreciation which may have been allowed subsequent to the date of the change in accounting method.

Respectfully,

/s/ GUY T. HELVERING,
Commissioner.

Intervener's Exhibit No. 4—(Continued)

(Copy)

4-345-1

Treasury Department
Washington

October 24, 1942.

Office of
Commissioner of Internal Revenue
Association of American Railroads,
Transportation Building,
Washington, D. C.

In re: Conditions under which Railroads
may change from Retirement to
Depreciation Accounting with re-
spect to Road Property

Sirs:

Reference is made to conferences between your Association and the Bureau of Internal Revenue on February 18 and 19, 1942, and to your brief on the above question, dated April 20, 1942.

Your brief has been considered by the Chief Counsel of the Bureau of Internal Revenue, who has ruled in effect, that the conditions under which permission will be granted railroads to change from retirement to depreciation accounting with respect to road properties are within the discretion of the Commissioner of Internal Revenue, and that the reasonableness of these requirements are questions of fact, rather than of law.

Intervener's Exhibit No. 4—(Continued)

This office also has given careful consideration to the brief which you submitted, and has come to the conclusion that, as a condition requisite to granting permission to change from retirement to depreciation accounting, a reserve representing past accrued depreciation shall be set up at the date of the change in accounting method.

Each railroad may elect to determine its reserve by one of the following methods:

1. The accounts may be reconstructed from their beginning, or may start with the I. C. C. valuation, setting up as a reserve the difference between cost of reproduction new and cost of reproduction less accrued depreciation as determined at the valuation date. From either starting point, the capital accounts shall be carried forward, increased by additions and decreased by retirements, except that any increase in replacement costs, or additions or betterments expensed, which have been deducted for income tax purposes, may not be restored. Depreciation at rates to be agreed upon shall be computed for all years and accrued into a depreciation reserve. From this reserve shall be deducted the cost of normal retirements, but for retirements due to casualty or special obsolescence, which would have been allowable under depreciation accounting, only the accrued depreciation thereon shall be deducted.

Intervener's Exhibit No. 4—(Continued)

2. A reserve may be set up by multiplying the expired life of individual structures, or the weighted average ages of the accounts representing groups of assets, now in service, by the depreciation rates agreed upon for these assets.

3. A reserve of 30% of the total depreciable accounts at the date of change may be set up. It is to be understood that this is an overall reserve and the total amount so computed is to be allocated to the different depreciable accounts on a reasonable basis, such allocation to be a matter of agreement between each railroad and the Bureau.

Respectfully,

/s/ GUY T. HELVERING,
Commissioner.

Attendance at conferences held February 18 and 19, 1942, in the matter of substitution for income tax purposes of depreciation accounting for retirement accounting on certain classes of road property.

Treasury Department

Thos. Tarleau, Legislative Counsel (Feb. 18)

Bureau of Internal Revenue

Norman D. Cann, Asst. to Comm. (Feb. 18)

Leo Diamond, Spl. Asst. to Chief Counsel (Feb. 18-19)

- Intervener's Exhibit No. 4—(Continued)
- S. P. Hatchett, Head, Engineering and Valuation Division (Feb. 18-19)
- E. L. Lindsey, Asst. Head, Engineering and Valuation Division (Feb. 18-19)
- R. C. Staebner, Chief, Public Utilities Section (Feb. 18-19)
- C. R. Dunn, Practice and Procedure Division (Feb. 18-19)
- H. J. Donnelly, Practice and Procedure Division (Feb. 19)

Railroads

- R. C. Beckett, Gen. Atty., Illinois Central (Feb. 18)
- J. C. Kauffman, Gen. Atty., Chesapeake and Ohio (Feb. 18-19)
- R. J. Lehman, Gen. Atty., Atch., Top. & Santa Fe (Feb. 18-19)
- F. J. Fell, Jr., V.P. & Compt., Pennsylvania RR. (Feb. 18)
- T. H. Seay, Compt., Southern (Feb. 18-19)
- L. J. Tracy, Controller, Union Pacific (Feb. 18)
- R. V. Fletcher, V. Pres., A.A.R. (Feb. 18)
- E. H. Bunnell, V Pres, A.A.R. (Feb. 18-19)
- R. L. Ettenger, Jr., Asst. to V. Pres., A.A.R. (Feb 18-19)

37773-6

[Stamped]: Received Mar. 22, 1943, Western Pacific Railroad Corporation.

[Endorsed]: Filed Feb. 3, 1949.

INTERVENERS' EXHIBIT No. 5

February 21, 1945.

Messrs. Pierce & Greer
40 Wall Street
New York 5, N. Y.

Attention Mr. F. C. Nicodemus, Jr.

Dear Mr. Nicodemus:

This Corporation has received notice from the Deputy Attorney General of Delaware stating that unless it pays the 1942 franchise tax and penalty interest by April 1, 1945, the Corporation's charter will be forfeited. The notice shows the following payments due as of April 1, 1945:

1942 franchise tax.....	\$2,525.00
12% penalty interest	505.00
1943 franchise tax	2,525.00
12% penalty interest	202.00
<hr/>	
Total	\$5,757.00

I feel that upon application to the State Tax Board of Delaware, they will agree to reduce the tax and interest penalty as they did for the years 1940 and 1941. If a reduction is allowed on the same basis, there would be due on April 1st the following:

1942 franchise tax	\$1,262.50
4% penalty interest.....	88.40

1943 franchise tax	1,262.50
4% penalty interest.....	37.90

Total	\$2,651.30
-------------	------------

The question in my mind is whether we should pay these taxes or let them go by default. If we default and our charter is voided, the question arises what would be the effect on the consolidated income and excess-profits tax returns filed by the Corporation, as parent, for the years 1942, 1943 and 1944. As you know, a very large deduction was taken in 1943, which wiped out any tax liability for that year and will also have an effect upon the 1942 and 1944 consolidated returns. I understand the total tax saving to The Western Pacific Railroad Company will amount to about 15 million dollars. Therefore, I feel the payment or non-payment of these franchise taxes must be determined particularly from the Federal income tax angle.

I would suggest that before arriving at a decision in this matter you confer with the firm of Whitman, Ransom, Coulson & Goetz, our tax counsel, who are aware of this situation and are considering the consequences which the non-payment of these franchise taxes would have from an income tax viewpoint.

If it is decided these franchise taxes be paid, my personal feeling is we should pay the tax for 1943 at the same time the 1942 tax is paid, thereby avoiding further accrual of penalty interest thereon.

I would appreciate your opinion on this at your early convenience.

A copy of this letter is being sent to Mr. Polk of the firm of W.R.C. & G., for his information.

Yours very truly,

/s/ M. J. CURRY.

cc. Mr. James K. Polk

Whitman, Ransom, Coulson & Goetz.

[Endorsed]: Filed Feb. 3, 1949.

INTERVENERS' EXHIBIT No. 6

May 31, 1944.

Mr. F. C. Nicodemus, Jr.

40 Wall Street

New York 5, N. Y.

Dear Mr. Nicodemus:

As you know (see copies our letters dated March 21, 1944, to State of Delaware, Office of Attorney General, and March 31, 1944, to Corporation Trust Company, Wilmington, Delaware) the State Tax Board granted extension to July 1, 1944, for payment of the Corporation's 1941 franchise tax, which as of July 1, 1944, will amount to \$1,262.50 principal, plus penalty interest of 4% from July 1, 1942, amounting to \$101—a total of \$1,363.50.

In view of conditions surrounding the Corporation at this time, I should like to have your opinion as to what should be done in the matter of payment

or non-payment of the tax. If not paid on or before July 1, 1944, its charter will be voided.

Yours very truly,

/s/ M. J. CURRY.

[Endorsed]: Filed Feb. 4, 1949.

INTERVENERS' EXHIBIT No. 7

Pierce & Greer
40 Wall Street
New York 5, N. Y.

June 14, 1944.

Mr. M. J. Curry
President
The Western Pacific Railroad Corporation
37 Wall Street
New York 5, N. Y.

Dear Mr. Curry:

As I mentioned to you yesterday, I talked with Colonel Coulson about the compromise proposal respecting the Delaware franchise tax involving the total payment as of July 1, 1944, of the sum of \$1,363.50. In the course of this talk I explained to Colonel Coulson that it would be necessary to make this payment in order to continue the corporate existence of the Company through the current calendar year, and that I did not see how we could avoid making this payment out of current available cash.

I told him that I felt quite sure, and he agreed, that Mr. Buckland would recognize the necessity of this payment should he ultimately succeed in maintaining his claim of a lien on our cash derived from Standard Realty and Development Company, notwithstanding the fact that his own claim has been satisfied and he has been made whole under the Commission's Plan of Reorganization.

You may, therefore, arrange for the payment referred to in your letter to me of May 31, 1944.

Yours very truly,

/s/ F. C. NICODEMUS JR.

Check No. 33

Date Paid June 28/44

Approved for payment

/s/ M. J. CURRY,
Treasurer.

[Marginal Note]: Mem. to note & number checks in payment on June 28th.

/s/ MJC

[Endorsed]: Filed Feb. 4, 1949.

INTERVENERS' EXHIBIT No. 8

March 27, 1943.

State of Delaware
State Tax Department
843 King Street
Wilmington, Delaware

Gentlemen:

Referring to letter of February 4, 1943, from the Office of the Attorney General, in regard to this Corporation's franchise taxes for 1940 and 1941, which are unpaid. Subsequently we also received from the Corporation Trust Company of Wilmington, Delaware, statement of franchise tax due on February 4, 1943, covering both years.

We have delayed replying, pending submission of the question to our Board of Directors.

We understand that under the Delaware statutes if the tax and accrued interest for the year 1940 is not paid by April 1, 1943, the Corporation's charter will be voided. As we are desirous of preventing this, if possible, we offer the following information in the hope that you will give favorable consideration to our request for relief through a compromise payment of the amount due.

This Corporation is a holding company, owning the entire capital stock of The Western Pacific Railroad Company, a California corporation, and one half of the common capital stock of The Denver and Rio Grande Western Railroad Company, a Delaware corporation, and, in addition, other securities

of both companies, which companies have been in process of reorganization under Section 77 of the Federal Bankruptcy Act since late in 1935. Practically the entire assets of the Corporation are in these two companies, from which no income has been received since just prior to filing petitions in bankruptcy.

On March 15, 1943, the United States Supreme Court handed down its decision in the Western Pacific case, which affirmed the plan of reorganization promulgated by the Interstate Commerce Commission and approved by the Federal District Court in San Francisco, which plan declared the stock of the Railroad Company to be without value, thereby wiping out approximately 80% of this Corporation's assets. The Interstate Commerce Commission's modified plan of reorganization for the Denver and Rio Grande Western, which also declares the stock of that company to be without value, has not been certified to the Federal District Court in Denver, however, we feel that since the Supreme Court upheld the Commission in declaring the stock of the Western Pacific to be without value, the Commission will, no doubt, maintain its position that the preferred and common stock of the Denver and Rio Grande Western has no value.

Aside from the stocks of the Western Pacific Railroad, which the Court decision indicates to be without value, all of the assets of the Corporation, constituting securities of both companies, are pledged to secure loans which have been in default since 1934.

It therefore becomes necessary for the Corporation to liquidate and dissolve, which should be accomplished within a period of six months.

In view of the above facts, will you please advise if your Bureau is willing to accept a compromise payment of the 1940 franchise tax, that is, about half of the tax, and waive the interest which has accrued?

A prompt response will be very much appreciated.

Yours very truly,

/s/ M. J. CURRY.

cc. The Corporation Trust Company
100 West Tenth St.
Wilmington, Delaware
Att. Mr. L. H. Herman.

bcc. Mr. F. C. Nicodemus, Jr.

[Marginal note]: Mr. Nicodemus of course approved this——.

[Endorsed]: Filed Feb. 4, 1949.

INTERVENERS' EXHIBIT No. 9

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York

December 11, 1946.

Allan P. Matthew, Esquire
Balfour Building
San Francisco, California

Dear Mr. Matthew:

This acknowledges your letter of December 7th. Evidently my night letter of December 6th was not altogether clear.

My difficulty did not arise at all from the fact that Mr. Schumacher turned over his trustee files to Mr. Curry. That he seemed to me to have a clear right to do if he so desired to the extent that he was entitled as trustee to hold the files.

What did give me some concern was the definition of what constituted trustees files. Physically, the file cabinets contained all the correspondence which Mr. Schumacher or Mr. Curry had written in their capacities as officers of the operating company. In other words, the construction given your advice was that all documents which came into existence during the period of trusteeship belonged to the trustees in their fiduciary capacity. This I hoped you did not mean by your opinion. Obviously the books of account of the company were maintained in theory during the period of trusteeship by the agent of the trustees. It would be a quite impracticable theory that these books of ac-

count must remain in possession of the fiduciary trustees.

If you meant your advice to apply to all papers affecting the operation of the railroad company during the period of trusteeship then I think the situation should be clarified by a prompt application by the railroad company to the court for an order directing the trustees to turn over to the officers of the reorganized company all papers which they held as fiduciaries and which affected the operations of the railroad company, subject, of course, to a right of inspection on the part of the trustees if any occasion therefor should arise.

If there is in the books any authority entitling Section 77 trustees operating a railroad company under supervision of the court to retain the vital records of the railroad company after their fiduciary capacity has terminated, I would certainly be interested in seeing the authority.

Naturally, my interest in the question discussed in this letter is solely in protecting the operating company in connection with the Van Kirk litigation here in New York, of which you have partial counterparts in the actions brought by the holding company in California. In this connection we have received copies of your answers in the California tax action of the holding company and I have also talked with Mr. Polk about his discussions with your office.

With all good wishes of the Season, I am
Sincerely yours,

/s/ ROBERT E. COULSON.

[Marginal Note]: Discussed with Col. Coulson and with Mr. Elsey by phone 12/16/46. Col. Coulson says nothing further to be done by us presently—or until we hear further from him. BE.

[Endorsed]: Filed Feb. 4, 1949.

INTERVENERS' EXHIBIT No. 10

February 11, 1947.

073

Via Air Mail

James K. Polk, Esq.,
c/o Carlton Hotel,
Washington, D. C.

Dear Mr. Polk:

In order that you may have definite authorization from this Company to proceed in connection with the pending controversy as to Federal income taxes for the years 1942, 1943 and 1944, as to which you hold power of attorney, I have today conferred with all available directors. All of the directors I have been able to reach, constituting a majority of the directors, have concurred in the proposal that you submit in writing to the Commissioner of Internal Revenue a definite proposal that the three years 1942, 1943 and 1944 be settled on the basis of no refund and no additional tax.

We understand that the year 1944 is involved in this controversy, so far as this Company is con-

cerned, only during the period of affiliation, that is, through April 30, 1944, and that for the balance of the year 1944 the taxes of this Company will be determined on the basis of its separate return for that period outside the affiliation.

This authorization will be formally ratified at a meeting of the Board of Directors to be held early in March, 1947.

Very truly yours,

/s/ CHARLES ELSEY.

Copy by regular mail.

[Endorsed]: Filed Feb. 4, 1949.

INTERVENERS' EXHIBIT No. 11

Wood, Walker & Co.

Members New York Stock Exchange

63 Wall Street

New York 5, N. Y.

February 24, 1948.

Mr. A. Perry Osborn
20 Exchange Place
New York 5, New York.

Dear Mr. Osborn:

On February 6, 1948, you asked us for the following information:

“A tabulation by months of Wood, Walker & Company's purchases and sales of Western

Intervenors' Exhibit No. 11—(Continued)

Pacific Railroad Company securities from Jan. 1, 1942, through 1945, and a separate monthly tabulation of such purchases and sales for the account of Mr. Wood, members of his family, any officer, director and counsel for the corporation, all during the same period."

We have examined our records, and to the best of our knowledge and belief, the following are the only transactions which would come within the above category.

A/C Anna M. Wood

- 1942 Sept. 30—Sold 1M Western Pac. R.R. Co. 5s/46 @37
Oct. 7—Sold 10M Western Pac. R.R. Co. 5s/46 @37
1943 Mar. 17—Sold 10M Western Pac. R.R. Co. 5s/46 @53³/₄
Mar. 17—Sold 10M Western Pac. R.R. Co. 5s/46 @53¹/₂
July 26—Sold 10M Western Pac. R.R. Co. 5s/46 @67¹/₂
1942 Dec. 30—Bought 10M Western Pac. R.R. Co. 5s/46 @ 36¹/₄

A/C Willis D. Wood

- 1944 Jan. 17—Sold 25M Western Pac. R.R. Co. 5s/46 @81
Feb. 3—Sold 10M Western Pac. R.R. Co. 5s/46 @89
Dec. 26—Sold 25M Western Pac. R.R. Co. 5s/46 @110¹/₄
Dec. 26—Sold 28M Western Pac. R.R. Co. 5s/46 @110¹/₄
1944 Dec. 27—Bought 53M Western Pac. R.R. Co. 5s/46 @110¹/₂
1943 Dec. 16—Sold 90shs Western Pac. R.R. Co. (Old) Comm.
\$1.00 (for the lot)

Yours very truly,

WOOD, WALKER & CO.

By /s/ D. A. MURRAY.

dm/hk

Intervenors' Exhibit No. 11—(Continued)

Wood, Walker & Co.

63 Wall Street

New York 5, N. Y.

March 10th, 1948.

Mr. Perry A. Osborn

20 Exchange Place

New York City, New York

Dear Mr. Osborn:

Am enclosing herewith for accounts of AM Wood and WD Wood the long position after purchases and sales, supplementing letter of February 24th.

Very truly yours,

/s/ MISS HELEN KOCIOLEK,
Secretary to W. D. Wood.

Supplementing Letter of Feb. 24th, 1948

Long position after purchases and sales
Western Pacific R. R. Co. Securities

Anna M. Wood Account

1942	Jan.	1—Western Pac. R.R. Co. 5s/46	Long 31M
	Sept.	30—Western Pac. R.R. Co. 5s/46	Sold 1M Long 30M
	Oct.	1—Western Pac. R.R. Co. 5s/46	Sold 10M Long 20M
	Dec.	30—Western Pac. R.R. Co. 5s/46	Bought 10M Long 30M
1943	Mar.	17—Western Pac. R.R. Co. 5s/46	Sold 10M Long 20M
	Mar.	17—Western Pac. R.R. Co. 5s/46	Sold 10M Long 10M
	July	26—Western Pac. R.R. Co. 5s/46	Sold 10M Closed

Intervenors' Exhibit No. 11—(Continued)

Willis D. Wood Account

1942	Jan.	1—Western Pac. R.R. Co. 5s/46	Long 88M
No transactions in years 1942 and 1943			
1944	Jan.	17—Western Pac. R.R. Co. 5s/46	Sold 25M Long 63M
	Feb.	3—Western Pac. R.R. Co. 5s/46	Sold 10M Long 53M
	Dec.	26—Western Pac. R.R. Co. 5s/46	Sold 25M Long 28M
	Dec.	26—Western Pac. R.R. Co. 5s/46	Sold 28M Long 28M
	Dec.	26—Western Pac. R.R. Co. 5s/46	Sold 28M Closed
	Dec.	27—Western Pac. R.R. Co. 5s/46	Bought 53M Long 53M
1942	Jan.	1—Western Pac. R.R. Co. (Old Comm.)	Long 100 shs
No transactions in year 1942			
1943	Dec.	16—Western Pac. R.R. Co. (Old Comm.)	Sold 90 shs Long 10 shs

Willis D. Wood

Western Pacific Securities

On hand end of year

Year	Shares Common (W.P.R.R. Corp.)	Shares Preferred (W.P.R.R. Corp.)
1923.....	500	200
1924.....	0	0
1925.....	0	0
1926.....	0	0
1927.....	0	500
1928.....	0	700
1929.....	1,700	2,400
1930.....	2,000	2,950
1931.....	2,000	2,950
1932.....	2,600	2,950
1933.....	100	2,000
1934.....	100	2,000
1935.....	100	2,000
1936.....	100	2,000
1937.....	100	2,000
1938.....	100	500
1939.....	100	500
1940.....	100	Closed
1941.....	100	
1942.....	100	
1943.....	10	
1944.....	10	
1945.....	10	
1946.....	10	
1947.....	10	

Intervenors' Exhibit No. 11—(Continued)

Willis D. Wood (Cont.)

Western Pacific R.R. Co. 1st 5s 1946

1935.....	\$26,000
1936.....	50,000
1937.....	50,000
1938.....	68,000
1940.....	68,000
1941.....	88,000
1942.....	88,000
1943.....	88,000
1944.....	Closed

Western Pacific R.R. Co. 5s 1946

1944.....	\$53,000
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1/9/45—Exchanged for \$21,200—4½s 2014; 318 Shs. Pfd.;
247.51 Shs. Com.; Cash \$12,025.17

Year Western Pacific R.R. Co. 4½s 2014

1/ 9/45—Received in exchange	\$21,200
8/ 7/46—Purchased	800

5/ 3/46—Redeemed\$ 7,000

4/12-19/47—Sold 15,000

\$22,000

22,000

Account Closed

Western Pacific R.R. Co. Preferred

1/ 9/45—Received in exchange	318 Shares
8/ 9/46—Purchased	32 Shares
1/ 9/48—Purchased	50 Shares

On hand 4/15/48400 Shares

Western Pacific R.R. Co. Common

1/ 9/45—Received in exchange	247.51 Shares
8/12/46—Purchased	52.49 Shares

On hand 4/15/48300 Shares

Intervenors' Exhibit No. 11—(Continued)

Anna M. Wood

Western Pacific Securities

On hand end of year

Year	Shares Common (W.P.R.R. Corp.)	Shares Preferred (W.P.R.R. Corp.)
1924.....	0	200
1925.....	0	0
1926.....	0	0
1927.....	0	0
1928.....	0	0
1929.....	0	200
1930.....	1,200	700
1931.....	1,200	1,100
1932.....	1,200	1,100
1933.....	1,200	1,100
1934.....	1,200	1,000
1935.....	1,200	1,000
1936.....	500	900
1937.....	500	900
1938.....	Closed	Closed

Western Pacific R.R. Co. 1st 5s 1946

1937.....	\$30,000
1939.....	31,000
1940.....	31,000
1941.....	31,000
1942.....	30,000
1943.....	Closed

[Endorsed]: Filed Feb. 9, 1949.

2142 *Western Pacific R.R. Corp., et al., vs.*

INTERVENERS' EXHIBIT No. 14

JKPBCC

February 11, 1947

Mr. Charles Elsey, President

The Western Pacific Railroad Company

526 Mission Street

San Francisco, California

Dear Mr. Elsey:

Enclosed herewith is a copy of the letter this day filed, pursuant to your authorization, with the Commissioner of Internal Revenue, Washington, D. C.

Sincerely yours,

JAMES K. POLK.

Enc.

(per BC)

Whitman, Ransom, Coulson & Goetz

40 Wall Street, New York 5, N. Y.

(Copy)

February 11, 1947

The Honorable Joseph D. Nunan, Jr.

Commissioner of Internal Revenue

Washington, D. C.

Attention: Mr. Frank Eddingfield

Re: The Western Pacific Railroad Corporation and Affiliated Corporations
1942, 1943 and 1944 Federal Income
Taxes

Dear Sir:

The Western Pacific Railroad Corporation and its affiliated subsidiaries filed consolidated returns

for the calendar years 1942 and 1943 and the said Western Pacific Railroad Corporation filed a consolidated return for the calendar year 1944 including therein its said subsidiaries for the period from January 1, 1944, to April 30, 1944, during which period affiliation existed.

On the said return for 1942 a consolidated tax liability of \$4,201,821.54 was reported and duly assessed and paid. On the said return for 1943 there was reported a net loss and no taxable income. On the said return for 1944, based on a carryover of the unused 1943 net loss, there was reported no taxable income and no tax liability. A claim for refund of the tax so paid for 1942, based on a carryback of the said 1943 net loss, was filed and is now pending in your office.

The taxpayer on behalf of itself and its aforesaid affiliated subsidiaries hereby offers to settle and determine the tax liabilities of the said corporations for the said taxable years 1942, 1943 and 1944 in the amounts shown on the returns filed as aforesaid. This proposal of settlement does not relate to or affect the tax liability of the said subsidiaries from and after April 30, 1944, when their affiliated status with The Western Pacific Railroad Corporation was terminated. The within proposal is made without prejudice to any rights or claims of the parties, if the proposal is not accepted by you.

As part of this proposal The Western Pacific Railroad Corporation, on behalf of itself and its aforesaid affiliated subsidiaries agrees that, if this

proposal is accepted, it will consent to a rejection of the said claim for refund of the 1942 taxes and further agrees not to sue upon said claim or file other or further claims in respect of 1942 taxes on any ground whatsoever. It is further agreed by the said The Western Pacific Railroad Corporation on behalf of itself and its aforesaid affiliated subsidiaries that if this proposal is accepted it will execute or procure the execution of any other or further agreements or assurances requested by the Commissioner of Internal Revenue for the purpose of effectuating the settlement.

Authority for the submission of the within proposal of settlement by the undersigned is contained in a Power of Attorney heretofore filed in your office.

Respectfully,

THE WESTERN PACIFIC
RAILROAD CORPORATION,
JAMES K. POLK,
Attorney-in-Fact.

[Endorsed]: Filed Feb. 9, 1949.

INTERVENERS' EXHIBIT No. 15
(Identification Only)

June 5, 1943

E. T. Buckland, Esq.

New York, New Haven & Hartford Railroad
New Haven, Connecticut

Western Pacific

Dear Mr. Buckland:

Bob Swaine called me up the other day to urge that you and I agree promptly upon the third member of the Reorganization Committee so that that Committee can appoint counsel and get to work on documents even prior to the formal approval of the Commission Plan by security holders. I told Bob that you and I had not yet discussed the matter of the third member of the Board and that the fault is mine.

My fellow trustees in the James Foundation (which holds all the stock of A. C. James Co.) are all clearly of the opinion that it would be advisable, if practical, for our group to have representation on the Reorganization Committee. Their argument is that, owing to the substantial bond holdings of the Foundation, the Foundation will have something like 21½% of the voting stock of the reorganized company. This interest is, of course, substantially greater than that which will be held by The Railroad Credit Corporation. It is also likely to be, of necessity, a more permanent interest. I have

explained that under the Commission Plan you and your Board have an equal right with the A. C. James Co. in the designation of a **representative**. I have, however, agreed to put the problem up to you and have stated to my fellow trustees that I thought there was no conflict in interest between your organization and ours since we are both anxious to see the common stock given those marketable characteristics which will come from putting it on a dividend basis.

There is one further embarrassment in the situation which has led me to defer talking with you about the matter. My associate trustees, who feel strongly that we should have representation in the Reorganization Committee, are unanimous in feeling that no one of them should serve and that it is my duty to serve because of my close contact with the matter and my knowledge of the properties and personalities involved. This has raised a problem to which I have been giving some thought. Under the terms of Section 77 a reorganization committee serves without compensation. With this I have no quarrel. However, I have a very real interest in seeing the Federal taxes of the reorganized property placed upon a sound basis. We have quite an effective Federal tax department and my partner, James K. Polk, was retained some time ago by the trustees to take up this Federal tax matter in connection with the 1942 tax problems of the property. You no doubt realize how complicated this matter has become for a railroad which has gotten into the

excess profits areas, especially in connection with a reorganization of its capital structure. I would be extremely reluctant to have any participation, which I might have in the Reorganization Committee, disturb the relationship which Polk and our tax department have to this problem.

When Bob Swaine talked to me about this matter, I told him quite frankly about this aspect. He seemed, a little to my surprise, quite eager that the James group should have direct representation on the Committee. No doubt he feels that a preliminary commitment on their part is, under the Commission Plan, basically necessary in setting up any permanent organization because of the voting power which they can exercise under the requirement of cumulative balloting. He said he saw no objection to a dual relationship and further volunteered that if his firm were selected as counsel for the Reorganization Committee, he would feel that their responsibility to the Reorganization Committee were completely fulfilled if their tax men merely reviewed with Polk the solutions and practical determinations worked out by Polk and his associates.

I wish you would give this entire problem consideration and either write me as to your views or arrange that you and I should sit down at some convenient time when you are here in New York and discuss the entire matter.

Mr. Boyden told me early in the week on the telephone that he hoped to get out the ballots in the Western Pacific case late this week or early next

week. I still feel it is of the utmost importance to have the reorganization made effective on the last day of the present calendar year.

Sincerely yours,

ROBERT E. COULSON.

INTERVENERS' EXHIBIT No. 16

Whitman, Ransom, Coulson & Goetz
40 Wall Street, New York

June 26, 1943

Mr. M. J. Curry, President
The Western Pacific Railroad Corporation
37 Wall Street
New York, N. Y.

Dear Mr. Curry:

This acknowledges your letter of June 21st as to the present needs of The Western Pacific Railroad Corporation.

While I am sending copies of your letter and of my reply to each of the Trustees of the James Foundation, it will probably not be possible to take formal action on your proposal until after July 1st.

In any attempt to settle the affairs of the holding company in a manner which will wipe out the large deficiency claims held by the Curtiss Southwestern Company, Chase National Bank of New York and

Central Hanover Bank and Trust Company, it would probably be desirable to provide, as a part of the consideration for the cancellation of the deficiency claims, that The Western Pacific Railroad Corporation agree to cooperate, by voting its stock in the Western Pacific Railroad Company, which stock has been declared worthless by the decision of the Supreme Court, to facilitate any necessary changes in the corporate structure of the operating company to effectuate the reorganization.

In a recent telephone conversation with Mr. Arthur Grotz, of the Chase National Bank, I learned that the Chase National Bank claims a lien on the stock of the operating company owned by the holding company. This lien presumably has no validity, as it has not been approved, so far as I am informed, by the necessary vote of two-thirds of the stockholders present at a stockholders' meeting. However, this situation does create some embarrassment in working out any settlement agreement.

As to the possible cancellation of your Delaware charter by failure to pay the 1940 franchise tax on or before July 1, 1943, this probably is of more apparent than real importance. Under the Delaware law the corporation continues its existence for all necessary purposes for a period of three years.

Before the Foundation gives a final and definitive answer to your proposal, I would wish to discuss with Mr. Polk the tax aspects of the problem and make that information available to the Trustees of

2150 *Western Pacific R.R. Corp., et al., vs.*

the Foundation. You will hear from me further in this matter.

Sincerely yours,

/s/ ROBERT E. COULSON.

[Stamped]: Received June 28, 1943, The Western Pacific Railroad Corporation.

[Stamped]: M.J.C. June 28, 1943.

[Endorsed]: Filed Feb. 9, 1949.

INTERVENERS' EXHIBIT No. 17

At New York, N. Y.

June 8, 1945.

File:

Mr. H. E. Poulterer:

I have told Mr. McCready that in the event he should be served with any legal process in the future, he is to accept service and turn all papers over to Mr. H. Brua Campbell of the firm of Pierce and Greer, 40 Wall Street, New York.

I have also asked Mr. McCready to advise you, with a copy to me, of the service of any such process, together with a brief description thereof.

J. E. HENNESSY.

JEH/ss

cc: Mr. D. C. McCready

[Endorsed]: Filed Feb. 11, 1949.

INTERVENERS' EXHIBIT No. 18-A
(Identification Only)

Western Union
(Telegram Form)

San Francisco, January 28, 1944

Shelly Pierce, Financial Editor
Journal of Commerce
New York, New York

Following statement was issued here in connection our December figures Quote During the first eleven months of 1943 Western Pacific made accruals in anticipation of Federal Income and Excess Profits taxes for that year. A recent re-examination of certain provisions of the reorganization plan which calls for severe reductions in the capitalization of the company has resulted in the conclusion by the management that no Federal income and excess profits tax liability exists in respect of 1943. In view of this conclusion entries were necessarily made in December income accounts which resulted in elimination of all such tax accruals for 1943. These adjustments produced the unusual income results for the month of December and the year. Unquote.

CHARLES ELSEY.

EWE:SH

INTERVENERS' EXHIBIT 18-B
(Identification Only)

Western Union
(Telegram Form)

1944 Jan 28, PM 5 14

FU323 CAK—San Francisco, Calif, 28 154 P
T. M. Schumacher
Western Pacific RR Co. 37 Wall St., NYK—

Anticipating inquires from newspapers and others concerning situation brought about in December figures from tax credit. Following statement was prepared and uniformly given to all inquirers without further embellishment:

“During the first eleven months of 1943 Western Pacific made accruals in anticipation of Federal income and excess profits taxes for that year. A recent re-examination of certain provisions of the Reorganization Plan which calls for severe reductions in the capitalization of the Company has resulted in the conclusion by the management that no Federal income and excess profits tax liability exists in respect of 1943. In view of this conclusion entries were necessarily made in December income accounts which resulted in elimination of all such tax accruals for 1943. These adjustments produced the unusual income results for the month of December and the year.”

Discussed this with Mr. Coulson here today and

he believes we should stand on such information without additional details. Above for your general information.

CHARLES ELSEY.

[Stamped]: Received Jan. 28, 1944, W.P.RR. Co.

[Stamped]: T. M. S. Jan. 29, 1944.

INTERVENERS' EXHIBIT 18-C

(Identification Only)

San Francisco, January 25, 1944.

073

Mr. D. C. DeGraff,

Mr. E. C. Bates,

Mr. C. L. Droit,

Mr. T. D. Brown.

Distribution of our mimeographed income statement for December and year 1943 is certain to provoke inquiries as to the unusual results springing from the elimination of Federal Income and Excess Profits Taxes for the year.

In order that we may answer such questions with uniformity, please utilize the information given below:

“During the first eleven months of 1943, Western Pacific made accruals in anticipation of Federal Income and Excess Profits taxes for that year.

“A recent re-examination of certain provisions of the Reorganization Plan, which calls

for severe reductions in the capitalization of the company, has resulted in the conclusion by the management that no Federal Income and Excess Profits tax liability exists in respect of 1943.

“In view of this conclusion, entries were necessarily made in December income accounts which resulted in elimination of all such tax accruals for 1943. These adjustments produced the unusual income results for the month of December and the year.”

If your inquirer presses for more details, I would suggest that you state that the whole matter is in the hands of our New York tax counsel.

CHARLES ELSEY.

bcc—Mr. E.W. Englebright,
Mr. P. L. Wyche,
Mr. Logan Paine.

[Marginal Notes]: This release was shown Mr. Coulson today and he thought it covered the situation sufficiently.

EW. E.,
1/28/44.

Ok'd by Mr. Elsey.
E.

INTERVENERS' EXHIBIT No. 19
(Identification Only)

McCutchen, Thomas, Matthew, Griffiths & Greene
Counselors at Law

San Francisco 4
February 8, 1944

Deliver

Mr. Charles Elsey, President,
The Western Pacific Railroad Company,
526 Mission Street,
San Francisco 5, California

The Western Pacific Railroad
Company Reorganization
Reserve Fund for Contingent Tax
Liability ~~and for Post War~~
~~Modernization and Improvement.~~

Dear Mr. Elsey:

Herewith I enclose in duplicate a proposed form of petition and a proposed form of order relating to the establishment of a reserve fund to be used for the payment of any possible Federal income and excess profits tax liability for the year 1943 and for post-war modernization and improvement of the railroad. You will notice that both the petition and the order are very brief and contain no statement of the reasons why it is believed that there is no Federal tax due for 1943. I think this subject can be fully developed at the hearing, following the outline suggested in Mr. Coulson's memorandum of

Interveners' Exhibit No. 19—(Continued)
February 4, 1944, which you sent me with your letter of the same date.

~~The title for the fund suggested by Mr. Coulson was "Reserve for Contingent Tax Liabilities." This title has been expanded in the enclosed forms to "Reserve Fund for Contingent Tax Liability and for Post-War Modernization and Improvement." It seems to me to be desirable to use the term "reserve fund" instead of the word "reserve" alone. Also, I believe that there may be some advantages in including "post-war modernization and improvement" as part of the title of the fund, so that in years to come the ultimate purpose of the fund will always be clearly disclosed on the books of account and balance sheets.~~

Please let me have your comments on the enclosed forms. You may wish to consult with Mr. DeGraff in order to make certain that the proposal is not in conflict with the accounting classifications or other rules or regulations of the Interstate Commerce Commission.

I shall defer submitting these forms to Mr. Coulson until I hear from you.

Very truly yours,

/s/ ALLAN P. MATTHEW.

[Marginal Notes]: Void—Mr. Matthew will provide revision.

(To be revised.)

[Stamped]: The Western Pacific Railroad Co
President, Feb. 8, 1944.

Intervenors' Exhibit No. 19—(Continued)

Allan P. Matthew,
1500 Balfour Building,
San Francisco 4, California

VOID

~~In the District Court of the United States, for the
Northern District of California, Southern Division~~

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

PETITION FOR AUTHORITY TO ESTABLISH A RESERVE FUND FOR CONTINGENT TAX LIABILITY ~~AND FOR POST-WAR MODERNIZATION AND IMPROVEMENT~~

T. M. Schumacher and Sidney M. Ehrman, the duly appointed, qualified and acting Trustees of the properties of the Debtor above named, hereinafter referred to as the Trustees, hereby represent to the Court and petition as follows:

I.

The Trustees are advised and believe that the Debtor and the Trustees have no Federal income ~~or excess profits tax liability for the year 1943.~~

Interveners' Exhibit No. 19—(Continued)

~~However, the Commissioner of Internal Revenue~~ has not yet passed upon the question, and the Trustees believe that it is in the best interests of the estate of the Debtor to provide a reserve fund out of which 1943 Federal income and excess profits taxes may be paid in the event that liability therefor should be established. The Trustees are advised and believe that the sum of \$7,100,000 will be adequate to cover any possible liability for such taxes for the year 1943. The estate of the Debtor contains sufficient cash derived from the earnings of the railroad of the Debtor during the year 1943 to establish a reserve fund in the amount of \$7,100,000 without using funds required for other purposes.

II.

It is the judgment of the Trustees that such reserve fund should be invested in United States Treasury securities and that any portion of the fund not required in order to meet such possible tax liability should be held and used for the modernization and improvement of the railroad of the Debtor after the conclusion of the present war. The Trustees propose to designate the fund as the ~~“Reserve Fund for Contingent Tax Liability and for Post-War Modernization and Improvement.”~~

Wherefore, your petitioners pray that they be authorized to establish, out of the earnings of the railroad of the Debtor during the year 1943, a ~~reserve fund in the amount of \$7,100,000, to be desig-~~

Interveners' Exhibit No. 19—(Continued)

~~nated as the "Reserve Fund for Contingent Tax Liability and for Post-War Modernization and Improvement," to be invested in United States Treasury securities, and to be used for the payment of any Federal income and excess profits taxes which may be found due for the year 1943, and, in so far as not required for that purpose, to be used for the modernization and improvement of the railroad of the Debtor after the conclusion of the present war.~~

.....,

~~Counsel for Petitioners.~~

State of California,

City and County of San Francisco—ss.

Charles Elsey, being first duly sworn, deposes and says:

That for more than twelve years last past he has been the President of The Western Pacific Railroad Company and since the appointment of the Trustees of the properties of said Company he has been their Agent in immediate charge of the railroad and other property of that Company; that he had read the foregoing petition and knows the contents thereof and the same is true of his own knowledge.

.....

Intervenors' Exhibit No. 19—(Continued)

Allan P. Matthew,
1500 Balfour Building,
San Francisco 4, California

Draft

VOID

~~In the District Court of the United States, for the
Northern District of California, Southern Division~~

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

ORDER AUTHORIZING ESTABLISHMENT
OF A RESERVE FUND FOR CONTINGENT TAX LIABILITY AND FOR POST-WAR MODERNIZATION AND IMPROVEMENT

The petition filed February, 1944, by T. M. Schumacher and Sidney M. Ehrman, the Trustees of the properties of the Debtor above named, for authority to establish a reserve fund of \$7,100,000 for contingent tax liability and for post-war modernization and improvement, came on duly to be heard and was heard this day and thereupon submitted. Good cause appearing therefor, the Court, ~~being fully advised, finds that notice of the hearing~~

Intervenors' Exhibit No. 19—(Continued)

~~upon said petition has been given as prescribed by~~
the order of this Court, that all of the averments
of said petition are true, and that it is for the best
interests of the estate of the Debtor that this order
be made.

Now, Therefore, It Is Hereby Ordered, Adjudged
and Decreed that the Trustees are hereby author-
ized to establish, with funds in their hands belong-
ing to the estate of the Debtor and derived from the
earnings of the railroad of the Debtor during the
year 1943, a reserve fund in the amount of \$7,100,-
000, to be designated as the "Reserve Fund for
Contingent Tax Liability and for Post-War Mod-
ernization and Improvement," to be invested in
United States Treasury securities, and to be used
for the payment of any Federal income and excess
profits taxes which may be found due for the year
1943, and, in so far as not required for that pur-
pose, to be used for the modernization and im-
provement of the railroad of the Debtor after the
conclusion of the present war.

Dated:, 1944.

A. F. ST. SURE,
~~Judge.~~

VOID

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein as designated by the parties, to wit:

Bill of Complainant for Equitable Relief.

Answer and Counterclaim of Defendants The Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway Company, Delta Finance Co., Ltd., and Standard Realty and Development Company.

Answer of the Defendant The Western Realty Company.

Reply to Counterclaim of Defendants The Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway Company, Delta Finance Co., Ltd., and Standard Realty and Development Company.

Notice of Motion for Leave to Intervene as Plaintiffs.

Order Granting Leave to Intervene.

Complaint in Intervention.

Answer of the Western Pacific Railroad Corporation to Complaint in Intervention.

Answer of Defendant The Western Realty Company to Complaint in Intervention.

Affidavit of Julius Levy Applying for Temporary Restraining Order and Preliminary Injunction on Behalf of Interveners.

Order Denying Application for Temporary Restraining Order on Condition, and Pre-trial Order and Exhibit A—Stipulation and Agreement, etc.

Stipulation and Agreement between Plaintiff and Defendants Relating to Agreement with the Bureau of Internal Revenue. and Exhibit A.

Answer of the Western Pacific Railroad Company et al. to Complaint in Intervention.

Supplemental Bill of Complaint.

Answer of Defendant The Western Realty Company.

Answer of Defendants The Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway Company, Delta Finance Co. Ltd., and Standard Realty and Development Company to Plaintiff's Supplemental Bill of Complaint.

Stipulation for Substitution of Meredith H. Metzger, formerly Meredith H. Van Kirk, as a Plaintiff in Intervention.

Stipulation Correcting Trial Record and Making Certain Exhibits as Part Thereof.

Opinion.

Findings and Conclusions Proposed by Plaintiff.

Notice of Motion for Reargument and to Amend Findings of Fact and Conclusions of Law Appearing in the Court's Opinion Filed September 6, 1949.

Notice of Motion of Plaintiff and of Alexis I.

duP. Bayard, Receiver, to Join Receiver as Party Plaintiff under Rule 25(c) R.C.P. and Exhibits.

Order under Rule 25(c) Directing the Joinder of Party Plaintiff.

Defendants' Objections to Findings and Conclusions Proposed by Plaintiff.

Findings of Fact and Conclusions of Law.
Judgment.

Notice of Motion to Amend Findings and Judgment.

Order Granting Motion to Amend Judgment.
Amended Judgment.

Notice of Appeal by Plaintiffs.

Notice of Appeal by Plaintiffs in Intervention.

Designation by Appellants of Contents of Record on Appeal.

Designation by Appellees of Additional Portions of the Record, Proceedings and Evidence to be Contained in the Record on Appeal.

Docket Entries.

Plaintiff's Exhibits Nos. 1, 3a, 3b, 4a, 4b, 5a, 5b, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20a, 20b, 20c, 20d, 20e, 20f, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32a, 32b, 33, 34a, 34b, 34c, 35, 36, 37, 38a, 38b, 39a, 39b, 39c, 39d, 39e, 39f, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77a, 77b, 78a, 78b, 79a, 79b, 80, 81a, 81b, 82 and 83.

Defendants' Exhibits Nos. 1, 2, 3, 4a, 4b, 4c, 5a, 5b, 5c, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24a, 24b, 25, 26, 27, 28, 29, 30, 31, 32

33, 34, 35a, 35b, 36, 37a, 37b, 37c, 38a, 38b, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52a, 52b, 53, 54, 55, 56, 57, 58, 59 and 60.

Intervenors' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18a, 18b, 18c, 19, 20 and 21.

Reporter's Transcripts:

For Monday, April 7, 1947.

Vol. 1 for Monday, August 25, 1947, 4:00 o'clock p.m.—Proceedings on Application for Temporary Restraining Order.

Vol. 2 for Tuesday, August 26, 1947, 9:00 o'clock a.m.—Proceedings on Application for Temporary Restraining Order.

For Monday, October 6, 1947—Proceedings on Hearing on Motions to Strike Portions of the Complaint in Intervention.

For Monday, November 28, 1949—Argument on Motions.

For Tuesday, January 11, 1949—Pre-Trial Conference.

Vol. 1 for Tuesday, February 1, 1949.

Vol. 2 for Wednesday, February 2, 1949.

Vol. 3 for Thursday, February 3, 1949.

Vol. 4 for Friday, February 4, 1949.

Vol. 5 for Tuesday, February 8, 1949.

Vol. 6 or Wednesday, February 9, 1949.

Vol. 7 for Thursday, February 10, 1949.

Vol. 8 for Friday, February 11, 1949.

Vol. 9 for Tuesday, February 15, 1949.

Vol. 10 for Wednesday, February 16, 1949.

Vol. 11 for Thursday, February 17, 1949.

Vol. 12 for Friday, February 18, 1949.

Vol. 13 for Wednesday, February 23, 1949.

In Witness Whereof, I have hereunto set my hand and seal of said District Court, at San Francisco, California, this 18th day of March, A. D. 1950.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VANBUREN,
Deputy Clerk.

[Endorsed]: No. 12506. United States Court of Appeals for the Ninth Circuit. Western Pacific Railroad Corporation and Alexis I. duP. Bayard, Receiver, Appellants, vs. Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway, Deep Creek Railroad Company, The Western Realty Company, The Standard Realty and Development Company and Delta Finance Co., Ltd., Appellees. Meredith H. Metzger, Henry Offerman and J. S. Farlee & Co., Inc., Appellants, vs. Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway, Deep Creek Railroad Company, the Western Realty Company, The Standard Realty and Development Company and Delta Finance Co., Ltd., Appellees. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed March 20, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12506

THE WESTERN PACIFIC RAILROAD COR-
PORATION and ALEXIS I. duP. BAYARD,
Receiver,

Plaintiffs and Appellants,

and

MEREDITH H. METZGER, HENRY OFFER-
MAN and J. S. FARLEE & CO., INC., a
Corporation,

Interveners and Appellants,

vs.

THE WESTERN PACIFIC RAILROAD COM-
PANY, et al.,

Defendants and Appellees.

STATEMENT BY APPELLANTS THE WEST-
ERN PACIFIC RAILROAD CORPORA-
TION AND ALEXIS I. duP. BAYARD,
RECEIVER, OF POINTS ON WHICH
THEY INTEND TO RELY ON APPEAL

Appellants The Western Pacific Railroad Corpo-
ration and Alexis I. duP. Bayard, Receiver, disig-
nate the following points upon which they intend
to rely on the appeal in the above-entitled cause:

1. The District Court erred in entering judg-
ment for defendants and against plaintiffs.

2. The District Court erred in failing to hold that plaintiffs are entitled to an accounting from defendant The Western Pacific Railroad Company and to a decree directing payment to plaintiffs of the entire amount of federal tax savings for the years 1942, 1943 and the first four months of 1944, amounting to \$17,201,739, resulting from the filing of consolidated federal income and excess profits tax returns in the name of the plaintiff corporation.

3. The District Court erred in failing to hold that plaintiffs are entitled to an accounting from defendant The Western Pacific Railroad Company and to a decree directing payment to the plaintiffs of some part of the above-mentioned \$17,201,739.

4. The District Court erred in holding that the defendant The Western Pacific Railroad Company was not bound to account to the plaintiffs for the benefits which said defendant obtained as the result of satisfying its federal tax liabilities by using tax credits and deductions of the plaintiff corporation at a time when the plaintiff corporation had lost its stock equity in said defendant and arising principally out of that very loss.

5. The District Court erred in failing to hold that, where the economic unity between a parent and a subsidiary corporation has been severed and the parent's stockholdings in the subsidiary have become worthless and the subsidiary utilizes or appropriates the parent's tax credit, arising from the loss of the parent's investment in the subsidiary,

by means of a consolidated return in which it satisfies its own tax liability by offsetting the parent's loss against the subsidiary's income and obtains other tax advantages from the use of the consolidated return with the parent, the former subsidiary must account to its former parent for the enrichment thus obtained.

6. The District Court erred in failing to hold that plaintiffs are entitled to an accounting from the defendants other than The Western Pacific Railroad Company and to a decree directing them to pay to the plaintiffs either all or part of their tax savings for the years 1942, 1943 and the first four months of 1944 resulting from the filing of consolidated federal income and excess profits tax returns in the name of the plaintiff corporation.

7. The District Court erred in holding that the use in consolidated returns with defendants of plaintiff corporation's loss to offset income of defendants and thus to produce tax savings was, as respects the United States, improper.

8. The District Court erred in holding that because of the alleged impropriety of the defendants' use in consolidated returns of the plaintiff corporation's loss to offset income of defendants, the plaintiffs were not entitled to an accounting of the tax savings thus resulting, and that the court should leave the parties where they are.

9. The District Court erred in failing to hold that by virtue of the stipulation filed in the District

Court on September 5, 1947, and its order of August 29, 1947, the sum of \$3,385,290 must be deemed to have been refunded to the plaintiff corporation by the Treasury Department in the ordinary course and manner prescribed by law and by that plaintiff paid into said District Court, that the said sum is now held by defendant The Western Pacific Railroad Company as agent of the District Court, that the said defendant should be directed to return said sum of \$3,385,290 to the Clerk of the District Court, and that the Clerk should be directed to deliver said sum forthwith to the plaintiffs in accordance with the District Court's opinion that the funds or tax savings resulting from the settlement with the government should be left where they are.

10. The District Court erred in holding that what plaintiff seeks is not all or a share of the tax savings but rather something in the nature of equity or value for its former ownership of stock of the defendant The Western Pacific Railroad Company, or something denied to it in the prior Reorganization Plan of The Western Pacific Railroad Company, and that recognition of said plaintiff's claim would be recognition of a right to share in the earnings of The Western Pacific Railroad Company.

11. The District Court erred in holding that Section 77 of the Bankruptcy Act or the philosophy underlying Section 77 stands as a barrier against the equitable validity of the plaintiff's claim in this cause, and that an award to the plaintiff would

in some way modify the administrative or judicial judgments in the said reorganization proceedings of the defendant The Western Pacific Railroad Company or would nullify either directly or indirectly the purpose of said Section 77.

12. The District Court erred in holding that "duality of control" is not relevant in resolving the issues in the case.

13. The District Court erred in holding that the plaintiff corporation could not have lawfully acquired any part of the tax savings here involved by voluntary agreement between the directorates of the plaintiff corporation and the defendant The Western Pacific Railroad Company.

14. The District Court erred in holding that the plaintiff corporation's right to a recovery depends on whether it could have lawfully acquired the tax savings by voluntary agreement between the directorates of the plaintiff corporation and the defendant The Western Pacific Railroad Company.

Dated: March 21, 1950.

/s/ HERMAN PHLEGER,

/s/ MAURICE E. HARRISON,

/s/ MOSES LASKY,

BROBECK, PHLEGER &
HARRISON,

/s/ FRANK C. NICODEMUS, JR.

/s/ A. PERRY OSBORN,

/s/ MAHLON DICKERSON,

/s/ NORRIS DARRELL,

/s/ LeROY R. GOODRICH,

Attorneys for Appellants The Western Pacific Railroad Corporation and Alexis I. duP. Bayard, Receiver.

Receipt of copies admitted.

[Endorsed]: Filed Mar. 21, 1950.

[Title of Court of Appeals and Cause.]

STATEMENT BY APPELLANTS MEREDITH
H. METZGER, HENRY OFFERMAN AND
J. S. FARLEE & CO., INC., OF THE
POINTS ON WHICH THEY INTEND TO
RELY

Appellants Meredith H. Metzger, Henry Offerman and J. S. Farlee & Co., Inc., state the following points on which they intend to rely on appeal in the above-entitled case:

1. Appellants are entitled to judgment on the ground that the moneys in issue were obtained in breach of fiduciary duties to plaintiff and constitute an unjust enrichment to defendants.

2. The Court below erred in finding that the fund in issue was created in such a fashion as to

require equity to leave the parties where it found them.

3. Assuming, arguendo, that the Court below correctly determined that the parties should be left where it found them, then, pursuant to that Court's own pre-trial order, the judgment should find and leave appellants with \$3,385,290.00

4. The reorganization proceeding involving the defendant The Western Pacific Railroad Company not only fails to preclude appellants from obtaining a favorable judgment herein, but indeed permits the assertion of the instant claims against that defendant under an assumption order and agreement duly made in said proceedings.

5. Defendants' technical defenses are without merit.

Dated: March 20, 1950.

/s/ WEBSTER V. CLARK,
ROGERS and CLARK,

/s/ DAVID FREIDENRICH,

/s/ JULIUS LEVY,

Attorneys for Plaintiffs in Intervention and Appellants Meredith H. Metzger, Henry Offerman and J. S. Farlee & Co., Inc., a corporation.

Receipt of copies admitted.

[Endorsed]: Filed Mar. 21, 1950.

[Title of Court of Appeals and Cause.]

ORDER DISPENSING WITH THE PRINTING
IN THE RECORD OF CERTAIN EXHIBITS

Upon the verified application of appellants The Western Pacific Railroad Corporation and Alexis I. duP. Bayard, Receiver, and good cause appearing therefor,

It Is Hereby Ordered that no part of plaintiffs' Exhibits 1, 2, 3A, 3B, 4A, 4B, 5A, 5B, 20A, 20B, 20C, 20D, 20E, 20F, 77A, 77B, 78A, 78B, 79A, 79B, 81A, 81B, 82 and 83 need be printed in the record herein, and that this Court will consider said exhibits in their original form without reproduction in the record.

Dated: March 24, 1950.

/s/ WILLIAM HEALY,
Circuit Judge.

/s/ HOMER BONE,

/s/ WALTER L. POPE,
Judges U. S. Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed March 27, 1950.

[Title of Court of Appeals and Cause.]

ORDER DISPENSING WITH THE PRINTING
IN THE RECORD OF CERTAIN EXHIBITS

Upon reading the verified application of appellees herein for an order dispensing with the printing of certain exhibits, and good cause appearing therefor,

It Is Hereby Ordered that no part of Plaintiffs' Exhibits 3A, 3B, 4A, 4B, 5A, 5B, 16 20A-F, 77A, 77B, 78A, 78B, 79A, 79B, 81A, 81B, 82 and 83, and no part of Defendants' Exhibits 27, 40, 42, 48, 52A, 52B and 60 need be included in the printed record herein, and this Court will consider said exhibits in their original form without reproduction in the printed record.

The Court will consider such other exhibits, which have not been designated for printing by any of the parties hereto, without reproduction in the printed record if at any time any such party shall designate such exhibits as material to the consideration of the appeal, provided that the party so designating such exhibits at its own expense shall provide the Court with printed copies thereof.

/s/ WILLIAM DENMAN,

/s/ CLIFTON MATHEWS,

/s/ WM. E. ORR,

Judges of the above-entitled
court.

[Endorsed]: Filed April 11, 1950.